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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

IMRAN ALRAI

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1:18-cr-192-JL

December 12, 2019

9:07 a.m.

EXCERPT TRANSCRIPT OF JURY TRIAL  
DAY NINE - MORNING SESSION  
BEFORE THE HONORABLE JOSEPH N. LAPLANTE

Appearances:

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Matthew Hunter, AUSA  
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Official Court Reporter  
United States District Court  
55 Pleasant Street  
Concord, New Hampshire 03301  
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## I N D E X

<u>WITNESS:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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TODD DONNELLY	3	18	51	52
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KEVIN KENNEDY	88	109	132	133
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JASON SGRO	135			
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GOVERNMENT RESTS				55
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MOTION				64
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<u>EXHIBITS</u>	<u>FOR ID</u>	<u>IN EVD</u>
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Government's 924		55
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1 P R O C E E D I N G S

2 THE CLERK: The Court has before it for  
3 consideration this morning day nine of the bench trial  
4 in criminal case 18-cr-192-01-JL, United States of  
5 America vs. Imran Alrai.

6 THE COURT: All right. Are we ready to  
7 continue?

8 MR. DAVIS: Yes.

9 THE COURT: Please proceed.

10 MR. DAVIS: Todd Donnelly.

11 THE COURT: Good morning.

12 THE WITNESS: Good morning.

13 THE COURT: You're still under oath.

14 THE WITNESS: Yes, your Honor.

15 CONTINUED DIRECT EXAMINATION

16 BY MR. DAVIS:

17 Q. Good morning, Mr. Donnelly.

18 A. Good morning.

19 Q. Yesterday I asked you about June 12th, 2018,  
20 and whether your gun was visible. Do you recall that?

21 A. I do.

22 Q. And did you notify me yesterday that you  
23 wanted to correct your testimony on that point?

24 A. Yes, sir.

25 Q. All right. And what do you remember about

1 your weapon and whether it was visible on June 12th of  
2 2018?

3 A. Well, I had wanted to -- I had wanted to talk  
4 to you about my answer. It's quick -- I'm easy -- it's  
5 easy for me to say that my weapon was not visible  
6 because that's how I carry myself 95-plus percent of the  
7 time. So I just wanted to clarify my answer.

8 I still feel that it probably was not, but I  
9 just did not want to leave it as an absolute because,  
10 you know, there are occasions where it may be visible  
11 and while I do not recall it being visible that day, I  
12 would hate to say that, you know, it absolutely was not.  
13 So ...

14 Q. Okay. So is it fair to say you -- you don't  
15 recall today whether your weapon was visible on  
16 June 12th?

17 A. That's correct.

18 Q. Is it also fair to say that it's your  
19 practice, generally, not to have your weapon visible  
20 when you're working?

21 A. Yes.

22 Q. Okay. Now, I asked you yesterday, or I was  
23 beginning to ask you, did you participate in the seizure  
24 of assets shortly after June 12th of 2018?

25 A. Yes, I did.

1 Q. And, indeed, on that day itself?

2 A. Yes.

3 Q. And did you author and sign various affidavits  
4 establishing probable cause that those assets were  
5 proceeds of this scheme?

6 A. Yes, sir.

7 Q. All right. And between June 12th and  
8 July 27th of 2018, did you execute a number of warrants?

9 A. I -- excuse me. Between -- over that period  
10 of approximately a month and a half, we executed five  
11 seizure warrants pertaining to six bank accounts and one  
12 investment retirement account that were under the  
13 control of Mr. Alrai.

14 Q. Okay. Let's briefly go through those.

15 On June 12th of 2018, did you execute seizure  
16 warrants at Pentucket Bank?

17 A. Yes. So there were three accounts at  
18 Pentucket and those were DigitalNet accounts in the name  
19 of DigitalNet. Those accounts had a combined total of  
20 \$979,000 and -- the approximate total -- and that's what  
21 was seized on that day, yes.

22 Q. So DigitalNet had almost a million dollars  
23 cash at Pentucket on June 12th, correct?

24 A. Yes, sir.

25 Q. And was one of those accounts the so-called

1 DigitalNet operating account that ends in 2684?

2 A. Yes, it was.

3 Q. All right. On July 13th of 2018, did you go  
4 to a different bank?

5 A. Yes. So the second seizure warrant was served  
6 on Citizens Bank. That was an account that was in the  
7 name of AISA Consulting Group. That account was opened  
8 approximately a year prior, in July of 2017.

9 The same month that it was opened, Mr. Alrai  
10 deposited a check of \$1 million that was drawn off his  
11 Pentucket account in the name of AISA Consulting and  
12 deposited that into the Citizens Bank account.

13 That account remained dormant for  
14 approximately a year or up until June 20th of 2018. So  
15 approximately a week after we served the seizure  
16 warrants, Mr. Alrai went into the bank, as we've heard  
17 testimony prior, and withdrew a half a million dollars  
18 from that account in the form of two bank checks.

19 Q. So what was left in the Citizens Bank AISA  
20 account on July 13th of 2018?

21 A. Approximately \$456,000.

22 Q. And did you seize that?

23 A. Yes, sir.

24 Q. Directing your attention to July 23rd of 2018,  
25 was there a warrant or a freezing of assets at a

1 Pershing account?

2       A.     Yes, there was. Pershing LLC is an investment  
3 company in New Jersey and that account was opened by  
4 Mr. Alrai in 2014. That was an IRA. And my -- the  
5 affidavit on my seizure for the seizure warrant would  
6 reflect that approximately \$263 (sic) that had been  
7 deposited into that account over the course of  
8 approximately four years from 2014 to 2018 would  
9 represent proceeds of illicit funds.

10           I believe the seizure warrant was for \$212,000  
11 and the reason for that is -- so when the account was  
12 opened in 2014, it was done so with two checks and the  
13 source of those two checks came from two different  
14 accounts. One of those accounts was Mr. Alrai's 401(k)  
15 with Fidelity from the Robert Allen Group from his time  
16 working at Robert Allen; the other check of  
17 approximately 51,000 came from a Pentucket account. So  
18 when the account was opened in 2014, it had a balance of  
19 I believe it was approximately \$84,000.

20           The following four years, Mr. Alrai would  
21 annually deposit between 51 and \$54,000 into that  
22 account from Pentucket, from the AISA Pentucket account  
23 that was funded through DigitalNet.

24           So the -- the difference between the two 12  
25 and the 263 is that first check or the -- or in 2014,

1 the first deposit, we did not touch the money that was  
2 rolled over from the Robert Allen Group. I did  
3 incorporate the 51,000 from Pentucket.

4 So that's -- and I question whether or not  
5 that should still be a part of it today, but ...

6 Q. In any event, the money from the Robert Allen  
7 Group 401(k) was not touched, correct?

8 A. Yes, sir.

9 Q. So what was the total amount frozen at  
10 Pershing in July of 2018?

11 A. Approximately \$212,000.

12 Q. And did you also go to Service Credit Union on  
13 July 27th?

14 A. Yes. So the -- the final two seizure warrants  
15 were on two different credit unions, Service Credit  
16 Union and Bellwether Community Credit Union. And those  
17 accounts were both opened, again, shortly after the --  
18 the search warrants were served on June 12th. Service  
19 Credit Union, I believe was opened on June 27th;  
20 Bellwether on June 20th, the same day that the money was  
21 withdrawn from Citizens Bank.

22 So when Mr. Alrai withdrew the half a million  
23 dollars from Citizens Bank in the form of two checks in  
24 the amount of \$250,000, he proceeded to deposit those  
25 funds into the two credit unions, Bellwether, which was



1 opened on, again, on the 20th, the same day that he  
2 withdrew the funds, had two accounts opened, a savings  
3 and a checking, and both of those accounts had a CD  
4 attached to them.

5 Mr. -- the accounts were joint accounts in the  
6 name of both Mr. and Mrs. Alrai and the CDs that were  
7 attached to the checking and savings at Bellwether had  
8 beneficiaries of their two children. And those accounts  
9 had -- the 250 deposited into Bellwether was split  
10 between the CDs for those two accounts, 125 in each.

11 I believe the -- the account overall was  
12 opened with approximately 300,000. We only seized the  
13 250 that was transferred from Citizens Bank.

14 Likewise, with the Service Credit Union  
15 accounts, that was opened with -- there was three  
16 accounts with Service Credit Union and there was  
17 approximately \$350,000 deposited into those accounts.

18 One of those accounts also had a CD attached  
19 that had \$300,000 in it and we seized 250,000 of that,  
20 again representing the proceeds from the Citizens Bank  
21 account.

22 Q. All right. So, all told, between June 12th  
23 and July 27th of 2018, how much in proceeds did you  
24 seize?

25 A. Between 2.1 and \$2.2 million, approximately

1 2,148,000, I believe.

2 Q. All right. Did you also participate in -- in  
3 civil forfeiture actions involving lis pendens against  
4 real estate?

5 A. Yes, sir.

6 Q. And, briefly, what were the real estate  
7 properties and what were the lis pendens filed?

8 A. So the two properties were 9 Corliss Drive  
9 in Windham, which is Mr. Alrai's residence, and  
10 21 Hampshire Road, Unit 115, in Methuen, which is his  
11 prior address.

12 These properties were both owned by Mr. and  
13 Mrs. Alrai. The Methuen property was purchased in 2006  
14 and at that time, two mortgages were taken out against  
15 the property which totaled approximately \$248,000.

16 The 9 Corliss Road property was purchased in  
17 2011 with one note against that property for  
18 approximately \$403,000.

19 All three notes pertaining to these properties  
20 were discharged between June of 2014 and January of  
21 2015. The Methuen property, both of those notes, one in  
22 June, I believe the other one in January, when those  
23 were discharged, I traced back approximately \$221,000  
24 of the proceeds pertaining to that note as being licit,  
25 whereas 9 Corliss Drive property, that note, which

1 was -- which was discharged in June of 2014,  
2 approximately three years after its origination, only  
3 60 -- I think it was 61-, 62,000 -- I don't remember the  
4 exact amount, I think it was 62 -- was traced back to  
5 illicit proceeds.

6 And the reason for that -- as the reason for  
7 that being that it was only 61 when the note was much  
8 higher is that I believe most of the proceeds that went  
9 into paying off that note came from Mr. and Mrs. Alrai's  
10 salary.

11 Q. Okay. And, again, that was the -- the salary  
12 amounts were not treated as fraud proceeds, correct?

13 A. That's correct.

14 Q. All right. I want to ask you just about some  
15 documents briefly. Let's look at Exhibit 144,  
16 pertaining to Count 44, one of the money laundering  
17 counts, and the check page, which is following.

18 And the bottom check is to Pershing, LLC?

19 A. Yes.

20 Q. All right. And I'll ask you to look at the  
21 word Pershing as it's written, handwritten, on the  
22 check. Do you see that?

23 A. I do.

24 MR. DAVIS: Can you blow that up, please,  
25 Ms. Sheff, further? Are you able to like double all

1 that?

2 MS. SHEFF: I don't think so. Let me see.  
3 Maybe.

4 Q. I want to ask you about the letter G in that  
5 word. Do you see the G in Pershing, Agent Donnelly?

6 A. Yes, sir.

7 Q. And do you notice anything distinctive about  
8 that G?

9 A. I -- I think that --

10 MS. SHEFF: Let me see if I can make it  
11 bigger.

12 A. I would say the G in itself is distinct the  
13 way that it's written.

14 Q. And what about in particular? What feature of  
15 the G would you point out as saying, well, that's kind  
16 of unusual?

17 A. Kind of the right angle that goes straight  
18 down and over.

19 Q. Okay. That -- that line that goes down sort  
20 of below it, right?

21 A. Yes.

22 Q. All right. Let me show you Exhibit -- and  
23 this check, by the way, is signed by Mr. Alrai, correct,  
24 the Pershing, LLC --

25 A. Yes, sir.

1 Q. -- check?

2 All right. So let's look at Exhibit 145 and  
3 the checks associated with 145, and particularly the one  
4 to New View Landscaping for \$27,000. Do you see that?

5 A. I do.

6 Q. And is that one signed by what looks like  
7 Mac Chaudhary's signature?

8 A. Yes, sir.

9 Q. But look at the word landscaping. Do you see  
10 the G in that?

11 A. Yes.

12 Q. And what do you see about it?

13 A. It's the same as the Pershing.

14 Q. All right.

15 THE COURT: Are you talking about the fact  
16 that it looks like basically like a C with a sharp  
17 90-degree right angle drawn, you know, on and to the  
18 right?

19 MR. DAVIS: Yes.

20 THE COURT: Yeah. And that goes -- that it  
21 dips below the line on which the words are written,  
22 yeah. That's your point?

23 MR. DAVIS: Yes.

24 Q. And just one more document. I want to go to  
25 Exhibit 201 and page 563 of 201.

1           Did you seize in this case a set of journals,  
2 business journals, of Mr. Alrai's?

3           A.    Yes, sir.

4           Q.    And did those journals have lots and lots of  
5 handwriting of Imran Alrai in them detailing different  
6 meetings and events?

7           A.    Yes, hundreds of pages.

8           Q.    All right. So if we go to the -- we see on --  
9 do you see page 563?

10          A.    Yes.

11          Q.    And do you see the word meeting at the top?

12          A.    Yes.

13          Q.    And what do you notice about the G in meeting?

14          A.    Well, it goes straight down like all the other  
15 Gs.

16          Q.    All right. And next -- next time meeting  
17 comes up on that same page?

18          A.    Once again.

19          Q.    All right. And next meeting on that page?

20          A.    Appears the same.

21          Q.    All right. And there's no question that this  
22 handwriting is the defendant's, correct?

23          A.    That's correct.

24          Q.    All right. Now, Special Agent Donnelly, did  
25 you do anything in terms of investigative work -- well,

1 I'm sorry. Let me -- let me start with Exhibit 610.

2 And do you recall that references were  
3 provided to United Way that had some names of  
4 references?

5 A. Yes.

6 Q. All right. And can we scroll down in 610 a  
7 little further to the names of the references? These  
8 were provided by Mohammad, correct?

9 A. That's correct.

10 MR. DAVIS: All right. Keep going. Those are  
11 principals, please. I think it's the next page. Here  
12 we are -- you were there. Go back one.

13 Okay. At the top of that page, can we  
14 highlight that?

15 Q. And do you see that name?

16 A. Steve R. Anderson.

17 Q. And what is his office?

18 A. CEO, AISA Systems Corporation, Fairfax,  
19 Virginia.

20 Q. With a phone number, correct?

21 A. Yes.

22 Q. And you heard the testimony that Pat Latimore  
23 had some difficulty tracking him down, but thinks she  
24 spoke to him or spoke to someone who gave a good  
25 reference for DigitalNet, right?

1 A. That's correct.

2 Q. Now, did you as the case agent in this case  
3 make any effort to identify something called AISA  
4 Systems Corporation?

5 A. Yes.

6 Q. In Fairfax, Virginia?

7 A. Yes.

8 Q. And what did you find?

9 A. Well, there was an AISA Systems Corporation,  
10 as we've learned, that was established in Fairfax, but  
11 not much else.

12 Q. All right. And that AISA Systems -- that AISA  
13 Corporation was not AISA Systems Corporation, right?

14 A. No.

15 Q. It was just called AISA Corporation?

16 A. Correct.

17 Q. And showing you briefly 208, Exhibit 208 in  
18 evidence, and the next page. Any other page here?

19 MS. SHEFF: I'm sorry. My mouse is not  
20 cooperating.

21 MR. DAVIS: The mouse is cold.

22 Q. And this shows that there was an AISA  
23 Corporation in Virginia, right?

24 A. Yes, Reston.

25 Q. And that -- and there's a letter in Virginia



1 dated July 27th, 2004, with an effective date of the  
2 certificate of incorporation?

3 A. Yes.

4 Q. But the person forming that corporation is  
5 who?

6 A. Imran Alrai.

7 Q. At an address in Reston, right?

8 A. That's correct.

9 Q. So there is an AISA -- AISA Corporation, or  
10 was, but did you find any other AISA Corporation that  
11 had lots of employees and global business and various  
12 officers?

13 A. No, sir.

14 Q. And what did you do to try to find it?

15 A. We did a lot of open and closed source  
16 searching. We checked many databases, but -- you know,  
17 as we did Mr. Anderson, it was -- there was nothing  
18 there.

19 Q. Okay. And so, lastly, did you specifically  
20 try to find Steve R. Anderson, who was the CEO of AISA  
21 Corporation?

22 A. Yes, also referred to as Steve Rampal Anderson  
23 in other documents. We did many searches, again, open  
24 and closed source. I went through a lot of passport  
25 applications as well to see if I might be able to find

1 one there. But no, we did not find a Steve Anderson.

2 Steve Anderson is a very common name and  
3 oftentimes it can become very cumbersome to go through  
4 hundreds of names. But in the end, we have not found a  
5 Stephen R., Steve Rampal Anderson, that would fit this  
6 investigation.

7 MR. DAVIS: Nothing further. Thank you.

8 THE COURT: Thank you, Counsel.

9 Cross-examination.

10 CROSS-EXAMINATION

11 BY MR. HARRINGTON:

12 Q. Good morning, Agent Donnelly.

13 A. Good morning, sir.

14 Q. How are you doing this morning?

15 A. I'm doing well.

16 MR. HARRINGTON: Ms. Sheff, could you pull up  
17 Exhibit Number 886. And if you could go to -- it has  
18 Bates 890 on it. I don't know what page it is.

19 Thank you.

20 Q. So, Agent Donnelly, I'm going to ask you a few  
21 questions and if at any time you need me to rephrase it  
22 because you're not understanding what I'm asking, please  
23 do so. Okay?

24 A. Sure.

25 Q. And, likewise, if I need to repeat anything or

1 clarify anything for you, please make sure you ask me to  
2 do that. Okay?

3 A. Yes, sir.

4 Q. So do you recall looking at Exhibit 886  
5 yesterday?

6 A. Yes, sir.

7 Q. And there were a number of pages you looked  
8 at, so if you need to look at anything else on this  
9 exhibit, please indicate that and we'll have Ms. Sheff  
10 bring it up for you. Okay?

11 A. Sure.

12 Q. I wanted to focus on this particular page.  
13 This is the Acceptance by Trustee that you indicated was  
14 signed by Mr. Chaudhary, correct?

15 A. Yes.

16 Q. Okay. And this is something that is a  
17 notarized document, correct?

18 A. Yes.

19 Q. Okay. And in your experience, what that  
20 typically means is that when a notary signs off on  
21 this -- and you can see that there was a notary that  
22 signed off on it, right?

23 A. Yes.

24 Q. And it has the notary's commission and the  
25 date it expires, correct?

1           A.     It appears that way.

2           Q.     Okay. And the notary seal appears to be  
3     within its appropriate time frame, October 26th, 2016 --  
4     I'm looking at this particular section here.

5           A.     Yes.

6           Q.     Okay. And that obviously is within the time  
7     frame in which the signature would have been put on it,  
8     correct?

9           A.     That's correct.

10          Q.     Okay. And in your experience, when somebody  
11     executes a document like this and it's notarized, the  
12     typical process would be for that person to appear in  
13     person and swear oath that the content is true to the  
14     best of their knowledge and belief, correct?

15          A.     Typically, yes.

16          Q.     Okay. And so as far as you know from looking  
17     at this document, Mr. Chaudhary signed this document and  
18     swore an oath to the content; is that fair to say?

19          A.     I mean, I really have no idea. Based on the  
20     document itself, I guess one could come to that  
21     conclusion, but I really couldn't testify to that.

22          Q.     Okay. But based on the view of the document  
23     and the notary and your understanding of how a notarized  
24     process would take place, that would be the typical  
25     process as you understand it, right?

1           A.     Sure.

2           Q.     A notary isn't supposed to notarize something  
3 unless the person appears personally and swears oath  
4 that it's true to the best of their knowledge and  
5 belief. That's your experience, correct?

6           A.     That's my understanding.

7           MR. HARRINGTON: Okay. And, Ms. Sheff, could  
8 you pull up side by side Exhibit Number 145 and go down  
9 a couple of pages to the check section.

10           And if you could pull up this one here and  
11 blow that one up, check number 1864, I think it is.  
12 Yes, correct.

13           And is there any way, Ms. Sheff, that you're  
14 able to kind of move -- shrink this a little so the  
15 signatures on each document can be viewed by the  
16 witness? Or perhaps -- I don't know if you go out of  
17 this and just highlight the signature section.

18           MS. SHEFF: Okay. You want it to be larger?

19           MR. HARRINGTON: If you can, Ms. Sheff.

20           Okay. And actually, why don't you bring that  
21 down. I'm just going to go with what's on each page and  
22 I'll have the witness look at what's on the page.

23           Q.     So if you look at this signature over here  
24 first, correct --

25           A.     Yes.

1           Q.    -- and then this signature over here. Based  
2 on your review of that, do you notice anything kind of  
3 distinct about the signature?

4           A.    They appear very similar.

5           Q.    Okay. And one of the things that is kind of  
6 unique to it is you notice there's a little kind of dash  
7 or slash, kind of at the end of the signature?

8           A.    Yes.

9           Q.    There's also kind of a little flurry at the  
10 end, kind of going up like that?

11          A.    Yes.

12          Q.    And I think, as you've already indicated, it  
13 would appear that these signatures are very similar to  
14 each other, in your opinion?

15          A.    Yes.

16          Q.    Okay. And if you were to make an opinion on  
17 it -- obviously we know you're not a handwriting expert,  
18 right?

19          A.    Correct.

20          Q.    Okay. But in viewing that and looking at it,  
21 you would indicate that that would appear to be signed  
22 by the same person; it looks like a very similar  
23 signature?

24          A.    Yes.

25               MR. HARRINGTON: Ms. Sheff, you can take those

1 documents down. Thank you.

2 And, Ms. Sheff, if you could pull up again  
3 check number -- excuse me, Exhibit 145 and go to the  
4 check section, please. And if you could bring up this  
5 check?

6 MS. SHEFF: Which one?

7 MR. HARRINGTON: The middle one. I apologize.  
8 Yup.

9 Q. You were -- you recall being asked about this  
10 check by Mr. Davis, correct?

11 A. Yes.

12 Q. And you were asked about the letter G and you  
13 talked about how the -- the similarities in that,  
14 correct?

15 A. Yes.

16 Q. Okay. And the similarities were relative to  
17 this section of the check kind of being filled out and  
18 your comment on the G and you compared that to some  
19 other documents, correct?

20 A. Yes.

21 Q. Okay. And the idea being that Mr. Alrai may  
22 have wrote out or filled out this middle section of the  
23 check; that's the idea, right?

24 A. Yes.

25 Q. Okay. And that certainly could have been.

1                   And then in connection with the execution of  
2                   this check, we see this signature that you've already  
3                   indicated appears to be consistent, appears to perhaps  
4                   have been signed by Mr. Chaudhary?

5                   A.     Yes.

6                   Q.     Okay. And so that certainly wouldn't be  
7                   something that would be out of the realm of what could  
8                   be reasonably thought of about this check, that perhaps  
9                   Mr. Alrai does fill out this middle section, talks with  
10                  his father about it, and then his father signs the  
11                  check, right?

12                  A.     Right.

13                  MR. HARRINGTON: You can take that check down,  
14                  Ms. Sheff. Thank you.

15                  Q.     I want to ask you -- I'm going to switch gears  
16                  now, Agent Donnelly, to a different subject.

17                  You had spent some time with the prosecutor  
18                  yesterday talking about the interview with  
19                  Mr. Chaudhary, right?

20                  A.     Yes.

21                  Q.     Okay. And some of the things that you've  
22                  indicated to the judge you believe were said during I  
23                  believe it was the June 12th, 2018, interview you had  
24                  with him, correct?

25                  A.     Yes.



1 Q. And also a February 7th, 2019, interview  
2 during a proffer, correct?

3 A. Yes.

4 Q. Okay. So I want to talk a little bit about  
5 that.

6 In regard to the June 12th interview that you  
7 did, you indicated that you go to the residence. How  
8 many agents went to the residence that day?

9 A. There were many. I don't recall how many.

10 Q. And you don't have to give me a specific  
11 number. I'm looking kind of for your best recollection.

12 A. Yeah.

13 Q. Because the question is, you know, there would  
14 obviously be a difference between if it was you and  
15 Ms. Laroe versus if it was -- and I may be  
16 mispronouncing her name.

17 A. Laroe.

18 Q. Laroe. I apologize.

19 There would be a difference if there was you  
20 and Ms. Laroe versus you, Ms. Laroe, and maybe, you  
21 know, a dozen other agents, right?

22 A. Right.

23 Q. So as best you can recall, how many agents do  
24 you think were there, aside from you and Ms. Laroe?

25 A. Yeah, there was probably a dozen or more.

1           Q.     Okay.  So while this is going on, and while  
2     you're interviewing Mr. Chaudhary, there are about a  
3     dozen other agents.  Are these all FBI agents?  Are they  
4     Homeland Security?  Is it a mix of both?

5           A.     It's a combination.

6           Q.     Okay.  And I'm not going to ask you to tell  
7     me, you know, how many of which, but in regards to these  
8     agents, were they dressed in a way that would identify  
9     themselves?

10          A.     For the most part, yes.

11          Q.     And how was that that they would identify  
12     themselves?  Is it the kind of common thing that we see  
13     with like the windbreaker?

14          A.     Yes.

15          Q.     Okay.  And that windbreaker would have like an  
16     ID tag, like on the front breast, right?

17          A.     Sure.

18          Q.     And then big kind of globe letters on the back  
19     of it identifying the agency, right?

20          A.     Yes.

21          Q.     Okay.  And for FBI, obviously, it's FBI; for  
22     Homeland Security, what would be the badge or the --

23          A.     HSI.

24          Q.     HSI.  Okay.  And, additionally, would you  
25     agree with me that the -- those agents, those dozen or

1 so agents, in addition to that, did they have badges  
2 displayed like neck badges or badges on their vests?

3 A. It's possible.

4 Q. Okay.

5 A. It would not be uncommon.

6 Q. Okay. And in regard to, you know, how they  
7 would also have been dressed, were they wearing any type  
8 of tactical gear like bulletproof vests?

9 A. Again, that would not be uncommon.

10 Q. Okay. And firearms on their sides?

11 A. Sure.

12 Q. Okay. And, additionally, would they have a  
13 tactical belt, bullets, handcuffs, things of that nature  
14 on a tactical belt?

15 A. They could, yes.

16 Q. Okay. Let me ask you in regard to when the  
17 search warrant's being executed, would it be fair to say  
18 that as this is being executed, there are a lot of  
19 things that the agents are actually taking out of the  
20 house; computer equipment, right?

21 A. Well, later on; not initially, no. Upon the  
22 initial execution, we were just securing the scene and,  
23 you know, we don't really begin the search until a while  
24 later. But eventually things are taken out, yes.

25 Q. Okay. And that would involve all of the

1 agents kind of going in and out of the house, right?

2 A. Yes.

3 Q. Going through different rooms, things of that  
4 nature, right?

5 A. That's correct.

6 Q. Okay. And in regard to how you were dressed,  
7 I appreciate the information that you gave early this  
8 morning about you're not sure if your firearm was --

9 A. Exposed.

10 Q. -- exposed or could be seen by Mr. Chaudhary.  
11 Basically, you're not sure. It could have, he indicated  
12 he saw it, you wouldn't dispute that, right?

13 A. That's fair.

14 Q. Okay. And in addition to that, you had  
15 indicated that you were dressed, I think you said kind  
16 of casually or corporate casual, is that the word you  
17 used?

18 A. Business casual.

19 Q. Okay. Did you have a badge displayed like a  
20 neck badge?

21 A. I doubt it.

22 Q. Okay. And how about a windbreaker identifying  
23 the agency that you were with, HSI?

24 A. Probably not. I believe I just had on a  
25 collared shirt and khakis.

1           Q.     Okay. And did you have anything else on,  
2     aside from the collared shirt?

3           A.     No. So, I mean, this warrant, I knew what  
4     my -- you know, what I needed to do during this warrant.  
5     We had a good idea that Mr. Chaudhary was going to be  
6     home. Myself and another agent were planning on  
7     interviewing him. I was not part of the initial team  
8     that went in to secure the residence, to search the  
9     residence. You know, my mission was to talk to  
10    Mr. Chaudhary.

11                     So I don't -- I typically don't wear a lot  
12    of that stuff. I mean, it depends on what I'm doing.  
13    So ...

14           Q.     And so you indicated you believe you were  
15    wearing khakis and a shirt, right?

16           A.     Yes.

17           Q.     Were you wearing a sport coat?

18           A.     I don't think so.

19           Q.     Okay. Where would your firearm be located on  
20    your person?

21           A.     Well, that depends. I often will wear it  
22    on my ankle. Sometimes -- sometimes I will wear it on  
23    my -- on my side and, you know, if that's the case, I  
24    would have had my badge next to it, not around my neck.

25           Q.     Okay. And so in this particular case, you're

1 wearing the corporate casual. If you don't have a coat  
2 or windbreaker or anything like that on and you have  
3 your firearm, that's going to be on your belt or your  
4 ankle, you've indicated?

5 A. Uh-huh.

6 Q. And if it's on your belt, you're also going to  
7 have your badge next to it. So it wouldn't be covered  
8 up or concealed if you don't have a sport coat or  
9 windbreaker on, right?

10 A. Right. And I don't want to say -- I'm pretty  
11 confident I didn't have a jacket on. I can't say for  
12 sure. There's always a chance. But I remember, you  
13 know, it was a warm day out, so -- you know, it was in  
14 June, so probably --

15 Q. Okay.

16 A. I'm guessing I did not.

17 Q. Now, let me ask you this. And it -- in regard  
18 to your role there today, you indicated specifically  
19 that you knew your -- one of your functions there, and  
20 it sounds like your prime function, was going to be to  
21 interview Mr. Chaudhary; is that right?

22 A. Yes.

23 Q. Okay. And in that regard, how long had you  
24 been taking to kind of prepare in executing the search  
25 warrant and knowing that you were going to interview

1 Mr. Chaudhary, how many days or weeks went into that  
2 before you got there on June 12th?

3 A. It happened very quickly, you know, we had the  
4 meeting with United Way in late May, spent a lot of time  
5 afterwards drafting search warrants and the seizure  
6 warrants to execute. There wasn't a whole ton of  
7 preparation just going into simply interviewing  
8 Mr. Chaudhary, to be honest with you, because there  
9 wasn't time for it.

10 Q. Yeah, and I'm not necessarily talking about  
11 preparation time. I'm talking about you knew your role  
12 going in, at least for several days before you actually  
13 went on June 12th, that you intended personally to  
14 interview Mr. Chaudhary.

15 A. Yeah, I don't remember when we developed the  
16 plan, if it was several days, the day or two before. I  
17 really don't recall.

18 Q. Okay. Fair enough.

19 In regard to that, the interview that you did  
20 with him that day, did you ever ask him to provide a  
21 written statement of -- kind of going over like you  
22 interview him and say, hey, I'd like you to reduce this  
23 down to a written statement; did you do that? You  
24 didn't ask him to provide a written statement in this  
25 case, right?

1           A.     No.

2           Q.     Okay. In regard to recording statements, you  
3 heard -- obviously you were in the courtroom, you heard  
4 some questions that I had asked about other witnesses  
5 and recording interviews.

6                   I'm assuming -- does Homeland Security have  
7 that same issue; you have to get permission in order to  
8 record or can you record at your discretion?

9           A.     We can generally record at our discretion.

10          Q.     Okay. So unlike the FBI, Homeland Security --  
11 and, in particular, you -- don't have to go and get  
12 preapproval or permission to do that; that's your  
13 testimony, correct?

14          A.     Yes.

15          Q.     And, in this case, there was no recording made  
16 of Mr. Chaudhary, correct?

17          A.     No.

18          Q.     Okay. And you would agree with me that at the  
19 proffer on February 7th, there was no recording made of  
20 the proffer session either, correct?

21          A.     No. I kind of wish there was now, but no,  
22 there was no recording.

23          Q.     Okay.

24          A.     Yeah.

25          Q.     And obviously -- and I appreciate the candor



1 about you kind of wish there was because what I'm  
2 driving at and what I think the judge has already said,  
3 you know, he understands, is that the recording of that  
4 would obviously be the best evidence of the questions  
5 that were asked and the answers that were given, right?

6 A. Sure. And, you know, I obviously said that  
7 somewhat tongue in cheek and I will say it's not our  
8 general practice to record interviews. We did in a  
9 couple of instances in this investigation because we  
10 were traveling out of state to, you know, Missouri and  
11 Ohio and those were nearly full-day interviews. So, you  
12 know, that's why I took the liberty to record those  
13 interviews. But outside of that, I would say generally  
14 we do not record any interviews with witnesses.

15 Q. And, actually, you kind of beat me to the next  
16 question I was going to ask you, which is you actually  
17 did do recorded interviews in this case of some  
18 witnesses?

19 A. Yes, sir.

20 Q. Okay. And that was, in part, because some of  
21 those interviews were lengthy, right?

22 A. Lengthy and out of -- and they were a long  
23 ways away.

24 Q. Okay.

25 A. Yes.

1           Q.     And you would agree with me Mr. Chaudhary's  
2     proffer was somewhat lengthy; I think you indicated  
3     yesterday that it lasted approximately three hours or  
4     so, right?

5           A.     Yes, but I will also say that I -- I -- my  
6     practice in other proffers, many of which are just as  
7     lengthy and even longer, is not to -- not to record  
8     them.

9           Q.     Sure. Understood.

10                  In regard to the proffer on February 7th,  
11     whose job was it or whose role was it to take notes of  
12     the interview?

13           A.     Special Agent Laroe.

14           Q.     Okay. And how were those notes taken? Did  
15     you observe how they were taken?

16           A.     I didn't watch her take them. I mean, she was  
17     sitting next to me taking them, but --

18           Q.     Yeah. And how?

19           A.     -- we don't really discuss that.

20           Q.     No, I'm talking about the manner in which the  
21     notes were taken. Like what did she do? Was it pen and  
22     paper and --

23           A.     Yes, I believe it was pen and paper.

24           Q.     Okay. And so in this particular case,  
25     obviously it went from pen and paper, being written

1 down, to being formalized in a typewritten narrative,  
2 correct?

3 A. Yes, sir.

4 Q. Okay. And your name is actually on that as  
5 well as Ms. Laroe's and Ms. Cacace's, right?

6 A. Yes, I reviewed and read the 302.

7 Q. Okay. And so that's done on February 7th.  
8 And then is it accurate -- we've heard testimony  
9 about -- from Mr. Chaudhary and I think yourself as  
10 well, I don't recall if Ms. Laroe said anything about  
11 it -- but the next time that Mr. Chaudhary sees this  
12 narrative that has been typewritten now of the  
13 February 7th proffer is I think he indicated  
14 November 21st of 2019. Is that your recollection as  
15 well?

16 A. It's my understanding. I was not there.

17 Q. Okay. And then based on that, once that was  
18 provided, this narrative report summarizing the proffer,  
19 you would agree with me that Mr. Chaudhary made numerous  
20 corrections to that document and returned it to the U.S.  
21 Attorney's Office, correct?

22 MR. DAVIS: Objection, hearsay.

23 THE COURT: Yeah, the basis would be hearsay,  
24 wouldn't it?

25 MR. HARRINGTON: I'm not asking actually for

1 the substance of the actual statements, Judge, or the  
2 corrections. I'm asking him if he's aware that the  
3 defendant made corrections. Defendant has actually  
4 already testified -- excuse me -- Mr. Chaudhary has  
5 already --

6 THE COURT: Sure. I think he sat there for  
7 that. So if that's the basis of his awareness, I don't  
8 know how that's objectionable.

9 MR. HARRINGTON: Well, not necessarily just  
10 that, but if he was aware of it before as well, Judge,  
11 because he sat in on the proffer, his name is on the  
12 report, and --

13 THE COURT: Sure.

14 MR. HARRINGTON: I'm asking him if he is aware  
15 that corrections were made to that.

16 THE COURT: Overruled.

17 MR. DAVIS: No objection to that question.

18 THE COURT: Objection to that question?

19 MR. DAVIS: I don't object to ask Special  
20 Agent Donnelly if he's aware --

21 THE COURT: No objection to that question.

22 MR. DAVIS: No objection.

23 THE COURT: Got it. Okay then, go ahead and  
24 answer if you understand what's going on here.

25 Q. If you need me to repeat the --

1           A.     I got a little bit confused there, so why  
2     don't we rephrase it.

3           Q.     Let me repeat the question.

4                     So you are aware that Mr. Chaudhary received  
5     this narrative report on or around November 21st of  
6     2019?

7           A.     Yes.

8           Q.     Okay. And you were also aware that after  
9     that, he had made corrections and revised it and sent  
10    that back to the U.S. Attorney's Office, correct?

11          A.     I learned that after the fact, yes.

12          Q.     Okay. And you learned that -- obviously  
13    you've been sitting here during the whole trial, right?

14          A.     Yes.

15          Q.     You didn't learn about the revisions during  
16    trial; you knew that revisions had been made before  
17    trial started, right?

18          A.     You know what, I don't -- I can't say for  
19    sure --

20          Q.     Okay.

21          A.     -- to be honest.

22          Q.     Fair enough.

23                     Were you also aware that as early as December  
24    the U.S. Attorney's Office was contacted relative to  
25    Mr. Chaudhary wanting to meet and make more corrections

1 to the report?

2 A. No, I was not aware of that.

3 Q. You were not aware of that?

4 A. No.

5 Q. You agree -- you heard Mr. Chaudhary testify  
6 in this case and you heard him testify that he did so,  
7 correct?

8 A. I -- yes, I heard him testify. I don't  
9 remember him saying that he contacted them wanting to  
10 make more changes, but it's certainly entirely possible.

11 THE COURT: Is that what you're saying he  
12 said?

13 MR. HARRINGTON: Yes, sir.

14 THE COURT: Okay. Okay.

15 Q. Now, would you agree with me, Agent Donnelly,  
16 that initially when you first started investigating this  
17 case, you were focused on what you believed to be  
18 DigitalNet and DigitalNet as it existed in the  
19 United States, correct? When you began your  
20 investigation.

21 A. To be honest, that's kind of hard to say. I  
22 was focused on seeing money go overseas, a lot of money  
23 going overseas, and it wasn't long after that we learned  
24 that there was a DigitalNet overseas. So I guess I  
25 can't necessarily go along with that.

1 Q. Okay. Fair enough.

2 Mr. Chaudhary did tell you during his  
3 interviews that there was a DigitalNet Pakistan office,  
4 correct?

5 A. Yes, he did.

6 Q. Okay. And you didn't really dive deeply into  
7 that discussion with him about, you know, who was there,  
8 who was staffing it, how long it had been in existence,  
9 things of that nature; you didn't really dive that  
10 deeply into that with Mr. Chaudhary, correct?

11 A. On June 12th, we did not get too deep into  
12 that.

13 Q. Okay. So I want to talk to you a little bit  
14 about --

15 If I may approach the witness, Judge?

16 THE COURT: Of course.

17 MR. HARRINGTON: So there's going to be an  
18 objection; we might as well try to address it now,  
19 Judge.

20 What I was going to do is approach with this  
21 narrative report that has a number of markups from  
22 Mr. Chaudhary on it --

23 THE COURT: Yup.

24 MR. HARRINGTON: -- and then ask the witness  
25 about these markups and the changes to it. I believe

1 that that would be appropriate questioning based on the  
2 impeachment that was done. This would be done more as  
3 rehabilitative relative to that subject talking about  
4 prior consistent statements as well as talking about  
5 some of the corrections that were made. And I think --

6 THE COURT: Those are corrections to a 302,  
7 right?

8 MR. DAVIS: Correct.

9 THE COURT: Who wrote the 302?

10 MR. DAVIS: Jill Laroe.

11 MR. HARRINGTON: And Todd Donnelly's name --  
12 it actually says by Jill Laroe, Todd Donnelly, and  
13 Darlene Cacace.

14 THE COURT: And this agent was present during  
15 the conversation?

16 MR. DAVIS: No, he wasn't, your Honor. And  
17 what he's reading --

18 THE WITNESS: Is that the proffer or is that  
19 November --

20 MR. DAVIS: It's the proffer with some of  
21 Mr. Chaudhary's writing on it.

22 THE WITNESS: Oh.

23 MR. DAVIS: So it's a copy of the February 7th  
24 proffer and that's why Mr. Donnelly's name is on it.  
25 But what Mr. Chaudhary -- I can explain what happened,



1 Judge.

2 THE COURT: You're explaining.

3 MR. DAVIS: I'm happy to approach --

4 THE COURT: You're explaining, yeah, you  
5 can --

6 MR. DAVIS: All right. So what happened was  
7 Mr. Chaudhary's interviewed June 12th --

8 THE COURT: Yeah.

9 MR. DAVIS: -- as this Court has heard. He  
10 got counsel. We sent him a subject letter, and we made  
11 a proffer agreement with counsel --

12 THE COURT: Yeah.

13 MR. DAVIS: -- and we did an extensive  
14 interview on February 7th of 2019 where a number of  
15 documents were shown to him and --

16 THE COURT: And that's the 302 from the  
17 proffer?

18 MR. DAVIS: And that's the 302.

19 THE COURT: Right.

20 MR. DAVIS: Now, prior -- just prior to trial,  
21 say two weeks before trial, November, something like  
22 that --

23 THE COURT: Yeah.

24 MR. DAVIS: -- I called Mr. Chaudhary and  
25 said, I would like you, if you're willing -- and

1 understanding it's an awkward situation, of course --

2 THE COURT: Yeah.

3 MR. DAVIS: -- I would like to sit down with  
4 you about your testimony and the questions I'm going to  
5 ask you.

6 Mr. Nicholson came in with Mr. Chaudhary, and  
7 Jill Laroe and I met with him as one of dozens of  
8 witness prep interviews that we were doing. And at that  
9 interview, I took out the February 7th proffer. And I  
10 don't usually show 302s to witnesses because the 302s,  
11 of course, is a statement of the FBI agent or the  
12 whatever agent and not --

13 THE COURT: Sure, it's the statement of the  
14 FBI agent summarizing the witness's statement.

15 MR. DAVIS: Correct, correct.

16 And I actually read it to him slowly and at  
17 various points he said, well, no, he wants to correct  
18 that.

19 THE COURT: Yeah.

20 MR. DAVIS: So I gave him that opportunity.  
21 And I ensured that -- and so Mr. Chaudhary gave what  
22 became -- and a lot of it was the same, maybe 80 percent  
23 of it was the same, 20 percent of it was different.  
24 Okay?

25 THE COURT: So when he -- when he -- when he

1 took issue with something that was in the old proffer  
2 302 and writing was made on the copy of the 302 --

3 MR. DAVIS: Correct.

4 THE COURT: -- was that done by the witness or  
5 by the agent?

6 MR. DAVIS: It was done by the witness.

7 THE COURT: All right.

8 MR. DAVIS: Okay?

9 THE COURT: Yeah.

10 MR. DAVIS: And I asked Jill Laroe, the case  
11 agent, to do a complete 302 documenting each change or  
12 correction that he made.

13 THE COURT: Yes.

14 MR. DAVIS: Now, at this point, I -- I don't  
15 see the difference between a correction and a change in  
16 story. And, in fact, what I've now heard is four  
17 different versions in it different ways --

18 THE COURT: Understood.

19 MR. DAVIS: -- by Mr. Chaudhary.

20 So -- but we went through that process, he  
21 wrote -- and wrote various things --

22 THE COURT: That's a great -- that's a great  
23 explanation of what happened.

24 MR. DAVIS: Yeah.

25 THE COURT: And it's exactly what I thought

1 happened.

2 MR. DAVIS: Yeah.

3 THE COURT: My question for you is what  
4 difference does any of that make to his exercise of  
5 approaching the witness with that 302 and questioning  
6 him about it?

7 MR. DAVIS: Because the question -- the  
8 witness has no knowledge of it, wasn't present, didn't  
9 draft that, and was not there for that interview.

10 THE COURT: Oh.

11 MR. DAVIS: I turned over that document, I've  
12 also turned over the full 302. They could have called  
13 Mr. -- Jill Laroe about those matters.

14 Now, I also don't think they're prior  
15 consistent statements because, as the Court knows, under  
16 Rule 801, the prior consistent statement must have been  
17 made before there was a motive to fabricate. And this  
18 is a prior consistent statement to --

19 THE COURT: Actually, I think that's been  
20 removed from the rule of evidence, believe it or not. I  
21 don't think that's a requirement anymore, the whole --  
22 the whole tying to the reason to fabricate.

23 I could -- I know the rule's been changed to  
24 some degree with respect to that issue --

25 MR. DAVIS: Yeah.

1 THE COURT: -- I mean, but, look, the point is  
2 this. I thought the witness was there. I thought this  
3 witness was present --- -

4 MR. DAVIS: No --

5 THE COURT: -- for those changes.

6 MR. DAVIS: -- he wasn't.

7 THE COURT: I don't -- I can't imagine why  
8 it's appropriate to approach him with that if he wasn't  
9 present for the changes, so I'm going to sustain the  
10 objection unless I'm missing the point, Mr. Harrington.

11 I think it would be very different if he was  
12 there. He would have heard these changes and be able to  
13 say, yeah, that's what happened or, no, that's not what  
14 happened, or I can't remember.

15 But he wasn't there, so I can't imagine how  
16 that's -- this is stuff for you to tell me about in your  
17 closing or to establish through another witness, but I  
18 don't think it's appropriate, either impeachment or just  
19 general questioning, for this witness, so I'm going to  
20 sustain the objection.

21 MR. HARRINGTON: Sure. I understand, Judge.  
22 I'll move on to a different subject.

23 THE COURT: Okay.

24 Q. Let's talk about the interview that you did on  
25 June 12th of 2018, okay, Agent Donnelly?

1           A.     Sure.

2           Q.     And so at that time, when you met with  
3 Mr. Chaudhary, it was you and Agent Laroe?

4           A.     No, myself and Agent Blackwood.

5           Q.     Blackwood. Okay. And was Mr. Chaudhary alone  
6 when you spoke with him or was anybody else there?

7           A.     He was alone.

8           Q.     All right. Now, given what we've talked  
9 about, with the number of agents that were present on  
10 scene, right?

11          A.     Yes.

12          Q.     And the manner in which they were dressed and  
13 so on, do you believe it would be a reasonable thing for  
14 Mr. Chaudhary to be scared?

15          A.     You know what, I -- I'm not going to sit back  
16 and judge anybody for being scared or not. I -- all I  
17 will say is that Ms. Blackwood and I brought  
18 Mr. Chaudhary to a private room where there were no  
19 other agents present. We treated him with the utmost  
20 respect and professionalism and there was absolutely no  
21 intimidation whatsoever imposed by either of us.

22                 So if Mr. Chaudhary was scared based on the  
23 presence of agents and law enforcement in his home that  
24 had guns and raid jackets on, then I'm not here to judge  
25 him for that.

1 Q. And I'm not asking you to judge him. What my  
2 question was is --

3 THE COURT: That wasn't his question, though.  
4 Listen to the question.

5 Q. What my question was is do you think it would  
6 be reasonable for a person in Mr. Chaudhary's situation  
7 to be scared in that situation.

8 A. I don't think it was reasonable when we were  
9 interviewing him to be scared, no.

10 Q. Okay. And you don't agree -- or let me ask  
11 you, do you agree that the situation in which we've  
12 described, you know, about a dozen agents combined of  
13 FBI and Homeland Security, in addition you and Ms. --  
14 was it Blackwood?

15 A. Yes.

16 Q. Okay. That that might be an intimidating  
17 situation for somebody?

18 A. Sure.

19 Q. Okay. So you would agree that that could be  
20 an intimidating situation?

21 A. Sure.

22 THE COURT: Just for academic reasons, I just  
23 checked the rule of evidence about your point about  
24 prior consistent statements and the -- the timing. And  
25 you're right, Mr. Davis. It -- there were two -- the

1 rule was changed with respect to prior consistent  
2 statements in 2014, but the comments say that the  
3 amendment retains the requirement set forth in *Tome v.*  
4 *U.S.* that under Rule 801(d)(1)(B), a consistent  
5 statement offer to rebut a charge of reasoned  
6 fabrication or improper influence or motive must have  
7 been made before the alleged fabrication or improper  
8 influence or motive arose.

9 So you're right. It doesn't make a difference  
10 with respect to the ruling, but it was just kind of  
11 nagging at me. Sorry for that interruption.

12 MR. HARRINGTON: No problem, Judge.

13 Q. So you would agree with me that during your  
14 interview you also understood and observed that  
15 Mr. Chaudhary spoke with a heavy accent?

16 A. Yes.

17 Q. Okay. And you would agree with me based on  
18 that observation you understood that English was not  
19 Mr. Chaudhary's native language, correct?

20 A. Correct.

21 Q. Did you know what his native language was?

22 A. I assumed it was either Punjab or, you know,  
23 an Islamic language.

24 Q. Okay. You also understood at that time that  
25 he had some difficulty hearing and he has hearing aids,



1 correct?

2 A. Yes.

3 Q. Okay. Do you know whether he had his hearing  
4 aids in at the time that you spoke with him or not?

5 A. I do not.

6 Q. Okay. And you did indicate that you had some  
7 difficulty communicating based on these things, but you  
8 felt that you were able to work through it, correct?

9 A. Yes, sir.

10 Q. Okay. In regard to -- I'm going to switch  
11 gears now, Agent Donnelly, and go to, very briefly, the  
12 seizure of assets that you talked about. Okay?

13 A. Yes.

14 Q. In general terms, one of the things that you  
15 tried to do when you were executing these warrants for  
16 the seizure of assets is you wanted to make sure that  
17 you didn't seize assets that might have come from  
18 legitimate sources, correct?

19 A. Yes.

20 Q. Okay. And you tried to do that to the best of  
21 your ability and some of the accounts had more money in  
22 them than were for the warrants for that very reason,  
23 right?

24 A. Yes.

25 Q. Okay. And you would agree with me that part

1 of the warrants, it's based on the information -- when  
2 you're trying to calculate how much and what the warrant  
3 is going to seize, part of that is based on the  
4 information that you're getting from the financial  
5 analysts that have testified, right?

6 A. Some of it was. Darlene and I spoke a lot  
7 during this time.

8 Q. Okay.

9 A. I performed -- I did a lot of analysis myself.

10 Q. Okay. And so that analysis, obviously we've  
11 heard some talk about dirty money, clean money, right?

12 A. Yes.

13 Q. And so you would agree with me that when  
14 you're doing the seizure of the assets in this case,  
15 you assumed that all monies that came from either  
16 Robert Allen or the United Way were dirty money, just  
17 like Ms. Cacace agreed -- thought, right?

18 A. Aside from Mr. Alrai's salary. I should  
19 exclude that, obviously.

20 A. Right. Yes.

21 Q. Okay. So during the seizure -- and obviously  
22 I understand this is difficult. Money's kind of a  
23 fungible thing.

24 A. Uh-huh.

25 Q. But, essentially, with that conclusion, that

1 doesn't give any credit or anything like that to any  
2 work that was legitimately provided or services provided  
3 to the United Way. That's just basically, as was said,  
4 taking all the money that came from the United Way under  
5 the contracts and all the money that came from Robert  
6 Allen under the contracts, and then trying to seize  
7 assets in that total amount?

8 A. Yes.

9 MR. HARRINGTON: Okay. Judge, I don't have  
10 any other questions for Agent Donnelly.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q. Briefly, Special Agent Donnelly, let me show  
15 you 886 again and the signature of Mac Chaudhary.

16 Next page, I think, or next. There. Even  
17 further, I think. The one after that. Very good.

18 Do you see the signature of Mr. Chaudhary?

19 A. Yes, I do.

20 Q. And you'll agree it's distinctive?

21 A. Yes.

22 Q. And did you see it on many documents relevant  
23 to this investigation?

24 A. Yes, sir.

25 Q. Did you also find an electronic image of that

1 signature on Mr. Alrai's home computer in Windham?

2 A. I did. There was a blank document that had  
3 two signatures electronically transposed onto that  
4 document. One of them was Mr. Chaudhary's; the other  
5 one, I believe it was Pat Latimore.

6 Q. Did it look essentially just like this?

7 A. Yes, it did.

8 Q. All right. You were also asked about the  
9 seizure of money in this case. You testified that you  
10 seized more than \$2.1 million in cash on June 12th of  
11 2018, right?

12 A. On June 12th, we seized --

13 Q. I'm sorry.

14 A. -- 979,000, but the overall seizure, yes, was  
15 over 2.1 million.

16 Q. Right. And by definition, given where that  
17 money was, in accounts that Mr. Alrai owned and  
18 controlled, was any of that 2.1 million going to pay a  
19 vendor or some contractor to do services for United Way?

20 A. No.

21 MR. DAVIS: No further questions.

22 MR. HARRINGTON: Very briefly, Judge.

23 THE COURT: Yup.

24 RECROSS-EXAMINATION

25 BY MR. HARRINGTON:

1           Q.     So talking just briefly about the money,  
2     Special Agent Donnelly, are you aware of whether -- if  
3     we assume that that money was obtained from Robert Allen  
4     and United Way, do you know whether or not that can  
5     constitute in whole or in part profits that Mr. Alrai  
6     would have realized on the provision of services to  
7     United Way and Robert Allen?

8           A.     Do I know whether or not that money included  
9     profit?

10          Q.     On the services that were provided to Robert  
11     Allen and United Way.

12          A.     No.

13                 MR. HARRINGTON:  No other questions, Judge.

14                 THE COURT:  Just give me a minute.

15                 I'm not sure I understood the last question  
16     and answer, but what were you trying to establish,  
17     Mr. Harrington?  It might be something very simple,  
18     like -- it seems like maybe it's a very simple concept,  
19     but I'm not sure what you were driving at.  What do you  
20     mean?

21                 MR. HARRINGTON:  So what I was driving at,  
22     Judge, is they -- as the agent has testified, all the  
23     money that was seized, they tried to make sure that it  
24     was money that was derived from either Robert Allen or  
25     United Way.

1           And my question was in that regard, the money  
2   that was seized, are you able to determine whether or  
3   not -- because what the government is saying is it's all  
4   illicit and ill-gotten goods.

5           My question was are you able to determine,  
6   since it's all kind of determined dirty money, whether a  
7   portion would be legitimate --

8           THE COURT:   Earned money.

9           MR. HARRINGTON:  -- earned money and profits  
10  by Mr. Alrai.

11          THE COURT:   So it is simple.  It's what I  
12  thought you were driving at.  I wanted to make sure.

13          MR. HARRINGTON:  Thank you, Judge.

14          THE COURT:   It's kind of the whole theme of  
15  the case.

16          MR. HARRINGTON:  It is, Judge.

17          THE COURT:   Yeah.  Okay.

18          MR. DAVIS:   No further questions.

19          THE COURT:   All right.  You're excused, Agent.

20          THE WITNESS:  Thank you, Judge.

21          THE COURT:   Thanks.

22                       (Witness excused.)

23          MR. DAVIS:   Your Honor, the government moves  
24  to admit Exhibit 924 and strike the ID, which I believe  
25  is the final set of slides by Mr. Naviloff.

1 THE COURT: Yeah.

2 MR. HARRINGTON: No objection, Judge.

3 THE COURT: Admitted, 924.

4 (Government's Exhibit 924 admitted.)

5 MR. DAVIS: Is that correct?

6 MS. SHEFF: It is correct.

7 MR. DAVIS: And, with that, the government  
8 rests --

9 MR. HUNTER: Well, actually --

10 MR. DAVIS: Oh, sorry.

11 MR. HUNTER: We also -- we swapped out the  
12 inside invoices, Tim -- I just wanted to make sure --  
13 416, the final set of inside invoices.

14 MR. DAVIS: Is that correct?

15 MS. SHEFF: That's correct.

16 MR. DAVIS: Yes. So 416 is already in.

17 THE COURT: 416?

18 MS. SHEFF: Yes, sir.

19 THE COURT: It's already in. All right.

20 All right.

21 MR. DAVIS: Government rests.

22 THE COURT: So the United States rests its  
23 case.

24 Does the defense -- is the defense going to  
25 put on any evidence?

1 MR. HARRINGTON: Yes, Judge.

2 And, Judge, one of the questions I have -- and  
3 it's a little odd, because there's no jury -- but is the  
4 moving forward judgment of acquittal under Rule 29.  
5 Obviously the timing can sometimes be important.

6 THE COURT: Yeah.

7 MR. HARRINGTON: I would make that now, but I  
8 didn't know if you would want to reserve that, as I know  
9 you can under the rule, but --

10 THE COURT: My usual practice is to take a  
11 Rule 29 motion under advisement, but I think the more  
12 basic question is whether, you know, Rule 29 is even a  
13 cognizable motion without a jury. I don't know the  
14 answer to that.

15 MR. HARRINGTON: That's why I raised it,  
16 Judge, because the only distinction when I looked at the  
17 rule was that if I make it at the close of the  
18 government's evidence, you're supposed to make your  
19 decision, even if you rule at a later time --

20 THE COURT: Sure.

21 MR. HARRINGTON: -- based on the evidence that  
22 existed at that time --

23 THE COURT: Yeah.

24 MR. HARRINGTON: -- versus if I present  
25 additional evidence.



1           So that may be a distinction without a  
2     difference since you are, you know, the trier of fact in  
3     this case, but I wanted to raise it to make sure that we  
4     proceeded in a, you know, fashion that was appropriate  
5     for the Court.

6           THE COURT:   Okay.   Just give me a moment.

7           Is anybody aware of any authority -- you know,  
8     I've been meaning -- it's one of those things I've been  
9     meaning to check for two weeks and haven't checked.  
10    I've done a lot of checking on Rule 23, but not so much  
11    on Rule 29.

12           Any authority for the proposition that a Rule  
13    29 motion is not a cognizable request for relief in a  
14    nonjury trial?   Anybody know?

15           MR. DAVIS:   I am not, Judge.   I -- I would  
16    have said that the defense can make such a motion, even  
17    in a bench trial.

18           THE COURT:   Yeah, me, too, I think.

19           MR. DAVIS:   Although the -- the rule does talk  
20    specifically about before submission to the jury.   So  
21    there's lots of references to the jury.

22           THE COURT:   On one hand, the rule references a  
23    jury.   On the other hand, why shouldn't the defense be  
24    able to say at the end of the case in chief that they  
25    haven't satisfied the burden?   It seems like a motion

1 that should be available, at least to the Court.

2 You're on your feet.

3 MR. AYER: I am, your Honor. Thank you.

4 I did some research into this. I wasn't able  
5 to find any law directly on point, but I agree with your  
6 Honor, though, because in related cases that are not  
7 directly on point, they discuss the difference between  
8 the state of the case at the close of the government's  
9 case in chief and the potential for the defendant to put  
10 on evidence that may help the government in its case,  
11 even if the defendant also feels like it helps himself.

12 THE COURT: Yeah.

13 MR. AYER: So I think for that -- I mean, for  
14 that reason, I think that it should be cognizable at  
15 this point were we to make one.

16 THE COURT: I think it's a good -- I think it  
17 makes sense. So you're making the motion?

18 MR. HARRINGTON: I am, Judge.

19 THE COURT: Here's my thought.

20 Generally it's been my practice to take these  
21 under advisement, but I will say this. I guess I want  
22 to hear you talk about it a little bit because -- a  
23 little bit of an argument about it because it's a  
24 motion. We can argue it. And the argument, whether or  
25 not it's decided in your favor, might inform your

1 decision about what evidence you put on and how to  
2 approach it.

3 I'm addressing defense counsel.

4 So here's my thought. There's -- there are a  
5 few counts here that I think are on the line. One --  
6 let me just take a look at the indictment again.

7 I think, based on the evidence I've heard,  
8 that Counts 52 and 53 are arguably vulnerable to  
9 dismissal at this point because the evidence I have  
10 heard -- I was chatting about this with my law clerk  
11 last night, that we might have -- we might be  
12 misapprehending something, but the evidence I've heard  
13 is that the defendant didn't know about the obligation  
14 to make these filings and there's a -- there's a  
15 scienter requirement in these charges.

16 If the defendant didn't know he was required  
17 to make the filings and that it was a violation of law  
18 to fail to file, it seems to me there might be  
19 reasonable doubt here on those two counts.

20 What do you say about that, Mr. Davis, or  
21 anybody on the prosecution's side?

22 MR. DAVIS: So, your Honor, I'm prepared to  
23 argue the willfulness element. And I do agree it's a  
24 circumstantial case and I also agree it's not the  
25 strongest count.

1 THE COURT: Yeah.

2 MR. DAVIS: But given the inferences in this  
3 stage, and it's whether any reasonable trier -- finder  
4 of fact could find proof beyond a reasonable doubt --

5 THE COURT: Yeah.

6 MR. DAVIS: -- we certainly think it's a  
7 maintainable charge.

8 But -- but, yes --

9 THE COURT: Your point is that a jury could  
10 return a guilty verdict on those counts.

11 MR. DAVIS: Yes.

12 THE COURT: Is there evidence on -- here's  
13 what it sort of comes down to for me.

14 What I was wondering is we have evidence where  
15 he put in writing, I didn't know I had to make these  
16 filings. I think it was -- he checked the form or there  
17 was a reason for failure to file. But the -- were there  
18 filings he made contemporaneously that did comply with  
19 the law that would have shown knowledge of the  
20 requirement? I don't think there was, but --

21 MR. DAVIS: No, I --

22 THE COURT: Okay.

23 MR. DAVIS: There's no evidence of that,  
24 correct.

25 THE COURT: Okay. So there's those counts.

1 That's under advisement.

2           The other one is, you know, the one I raised  
3 yesterday. I think the contemporaneously first few  
4 money laundering -- I think there's four of them, that  
5 occurred before the wire -- the wire fraud substantive  
6 counts are arguably vulnerable to dismissal. It's not  
7 that I think Mr. Davis's version of the law is  
8 necessarily wrong, that the entire scheme -- the entire  
9 scheme can constitute the unlawful conduct that makes  
10 these funds currently derived, it's just that the way  
11 it's charged in the indictment strongly suggests that  
12 the criminal conduct is the substantive wire fraud  
13 counts that were part -- you know, that are part of the  
14 larger scheme, but are still -- all of which postdated  
15 this laundering conduct, this alleged laundering  
16 conduct.

17           I don't need to hear argument about that. I  
18 just want to put you on notice. You've made your point  
19 to me and I understand your arguments on it, on that  
20 issue.

21           MR. DAVIS: I do have two cases. We did  
22 research that point last night. And so I -- I will  
23 provide the Court with the cases, if that's okay.

24           THE COURT: Do you have it handy?

25           MR. DAVIS: Yes.

1           The cases, for the record, are --

2           THE COURT: Even just the cite, yeah.

3           MR. DAVIS: *United States vs. Lo*, L-o, in the  
4 Ninth Circuit, which is 839 F.3d, 777.

5           THE COURT: 839 F.3d 777. Yeah?

6           MR. DAVIS: Yes. And then the First Circuit  
7 case which cites *Lo* is *United States vs. Cox*, 851 F.3d  
8 113.

9           And your Honor --

10          THE COURT: Say that again.

11          MR. DAVIS: I'm sorry. 851 F.3d, 113.

12          THE COURT: Thank you.

13          MR. DAVIS: Neither case is precisely on  
14 point.

15          THE COURT: Yup.

16          MR. DAVIS: But both cases stand for the  
17 proposition that in a wire fraud context, the proceeds  
18 of the wire fraud are the proceeds of the scheme and are  
19 not limited to particular counts of wirings in the  
20 indictment.

21          THE COURT: Yeah. Well, certainly not limited  
22 to particular counts. I mean, I -- certainly not  
23 limited to particular wirings probably. The way you're  
24 describing the law actually does make sense to me. What  
25 I'm wondering about is as a trier of fact, trying to

1 appreciate the indictment for the -- the language it  
2 uses, might I be -- might I take a different view of  
3 just the evidence as you've charged it. That's a  
4 question that's up to me and I'll have to -- I'll have  
5 to figure it out.

6 MR. AYER: I'll just point out, you know,  
7 obviously we'll reserve further argument if need be, but  
8 on a first review of the Cox case, it appears to be a  
9 sentencing case where obviously the standard is  
10 different for what money's related, what the Court can  
11 do, and what standard the Court uses to get to that  
12 money.

13 THE COURT: Sure.

14 MR. AYER: So I'll review the case in more  
15 detail, but it appears to be a sentencing issue, not  
16 the sufficiency of an allegation in an indictment with  
17 regard to the remainder of the indictment.

18 THE COURT: All right.

19 MR. AYER: So I feel like the issue before  
20 this Court may require the Court to take a narrower  
21 view.

22 THE COURT: Understood.

23 So I've expressed my views. I'm taking -- on  
24 those issues, I'm taking it under advisement. You may  
25 have wanted to be heard, though, Mr. Harrington, on --

1 you may have wanted to be heard more on this motion, so  
2 if you do, please proceed.

3 MR. HARRINGTON: And, Judge, what I would do  
4 is as far as the motion for judgment of acquittal, I  
5 would just -- by way of the record, I would incorporate  
6 the discussion that we just had because those are the  
7 arguments that we wanted to make on those issues. And  
8 so I don't think I need to belabor by doing them again.  
9 I think they're appropriately vetted for your  
10 consideration.

11 What I would suggest then in more general  
12 terms relative to the case as a whole for you to  
13 consider is that there is insufficient evidence for you  
14 to conclude beyond a reasonable doubt the defendant's  
15 guilt on these charges.

16 I think what you have before you, if you even  
17 take the evidence in the light most favorable to the  
18 government, is that if the defendant is to have done  
19 what the government alleges, which is perhaps committing  
20 a breach of his fiduciary duty to the United Way by not  
21 disclosing his relationship to DigitalNet and by then  
22 later, after contracts were entered into, not disclosing  
23 or providing information relative to DigitalNet that may  
24 have been puffery, according to Mr. Chaudhary, relative  
25 to the number of people, the locations, things of that



1 nature, what I would suggest to you is that that in and  
2 of itself, misrepresentations, do not amount to a fraud.

3 And what I'm asking you to do is essentially  
4 take a broader view, Judge, of what else is there that  
5 would show you intent in this case. And what I think is  
6 showing and telling is the contracts and the performance  
7 on the contracts. And we would argue to you that the  
8 contracts that were entered into were fully performed.

9 I think if you go back and you think and  
10 listen to the testimony of any of the United Way  
11 employees in this case, Ms. Latimore in particular, who  
12 was the defendant's supervisor, said that they were  
13 satisfied with the performance of the contracts with  
14 DigitalNet and that there was no testimony that the  
15 services that were contracted for were not provided.

16 THE COURT: Uh-huh.

17 MR. HARRINGTON: Nobody from United Way said  
18 that. And, in fact, the testimony was that after  
19 DigitalNet was hired, the IT environment improved and  
20 got better.

21 So the idea of the misrepresentations, I  
22 understand that, and those are issues that are not  
23 flattering for Mr. Alrai. However, I think what goes  
24 more to intent than did he have a scheme to defraud  
25 performance of the contracts and providing the services

1 would indicate that, no, there is no intent to defraud  
2 United Way. His intent was to fully perform the  
3 contracts, and he did.

4 What I would also suggest is that if you  
5 accept that proposition, that these contracts were  
6 performed, that there was not an intent to defraud  
7 United Way of money, that by virtue of that, there can  
8 be no wire fraud and as a result, all the other charges  
9 would fall in a domino fashion because --

10 THE COURT: Oh, yeah.

11 MR. HARRINGTON: -- because it's all  
12 derivative.

13 THE COURT: Yeah.

14 MR. HARRINGTON: So that's what we are arguing  
15 to you, Judge, and I think that you can see other  
16 evidence relative to the performance of the contracts,  
17 relative to Robert Allen, for example. Although it's  
18 not part of the charges, the information is out there.  
19 There were four contracts that were entered into.

20 The testimony was, from the people who  
21 testified from Robert Allen, that three of those  
22 contracts were performed satisfactorily; that there was  
23 one contract in particular, the telephony contract, that  
24 they were -- excuse me, the web development contract  
25 that they were unsatisfied with, and ultimately they

1 stopped payment on it, chose not to pursue a lawsuit.

2 I would argue to you there would be issues  
3 on both sides of that. And although there was some  
4 satisfaction expressed by Mr. Riviera relative to the  
5 telephony system, there was no indication that the  
6 services that were contracted for were not provided.

7 Again, I think that gives further support to  
8 the idea that there was no intent to defraud.

9 And I'd also point to the fact of the timing,  
10 that Mr. Alrai was there for about one month before he  
11 left Robert Allen and began at United Way and was no  
12 longer part of Robert Allen at that point in time.

13 The other thing that I would point to, Judge,  
14 is that if you look at the other evidence that  
15 Ms. Latimore testified to and that others testified to  
16 relative to Mr. Alrai and his performance at United Way,  
17 he got nothing but superlative reviews at the United  
18 Way. He was promoted to vice-president and CIO.  
19 Comments, which are in the exhibits for you to consider,  
20 talk about how he basically did great at managing  
21 vendors, that the services provided were good. So you  
22 have all of these positive reviews of someone who is  
23 doing their job.

24 So all of that said, Judge, I think that the  
25 government fails on the issue of intent here and, as a

1 result, you should issue a judgment of acquittal.

2 Thank you, your Honor.

3 THE COURT: Thank you, Counsel.

4 Mr. Davis, or anyone.

5 MR. DAVIS: Your Honor, addressing first the  
6 FBAR in Counts 52 and 53, the -- a reasonable trier of  
7 fact could find proof of guilt beyond a reasonable  
8 doubt, albeit based on circumstantial evidence.

9 The Court is correct, there is no direct  
10 evidence that the defendant knew about the FBAR  
11 requirements and that the mens rea in this tax-type  
12 offense does require knowledge of the law effectively.

13 However, the circumstances include the  
14 following: There are two client organizers, one for  
15 2014, one for 2017, with different versions of language  
16 that Mr. Terry specifically testified were sent that had  
17 Mr. Alrai's and his wife's name on them, that had  
18 information in them, and that were specifically sent to  
19 the client. And those organizers raised the issue of  
20 foreign assets and --

21 THE COURT: That was sent by the accountant,  
22 right?

23 MR. DAVIS: That that was sent by the  
24 accountant --

25 THE COURT: Okay.

1           MR. DAVIS:  -- correct.  But the accountant  
2   also said that -- and I'm familiar with this myself --  
3   sometimes people don't read them; some people don't send  
4   them back.

5           THE COURT:  Sure.

6           MR. DAVIS:  And we acknowledge that.  But that  
7   organizer at least is a part of the evidence that the  
8   defendant must have known of the FBAR requirement.

9           The second -- the second point beyond the  
10  organizer is the tax returns themselves, and that's  
11  really the strongest evidence.

12           The tax returns have, as the Court knows, all  
13  kinds of places where you put numbers.  It doesn't have  
14  many questions.  But that part of Schedule B has  
15  questions that address this directly and as clearly  
16  as -- as possible.  And that part of Schedule B is there  
17  every year and in the two charged years, which are 2014  
18  and 2016, and they ask the taxpayer:  Do you have a  
19  foreign bank account?  If so, you need to file an FBAR  
20  or you may need to file an FBAR.

21           And that leads to the -- the further  
22  circumstantial point, which is that Mr. Alrai is highly  
23  intelligent, deeply involved in every aspect of his very  
24  complicated financial life, and controls every detail of  
25  his complex tax profile.

1           Lots and lots of people go to their CPA in  
2   March and dump a bunch of documents on them. That's not  
3   what he does. What he does is say, I don't want you  
4   bookkeeping for me, but what I'm going to give you is a  
5   spreadsheet, a seven-page long, dense spreadsheet with  
6   every expense out of DigitalNet account all categorized  
7   by him and then questions about every deduction known to  
8   man and every possible exemption.

9           And so all of that is -- is obtained. And yet  
10   Mr. Alrai, when this one -- one issue about do you have  
11   a foreign bank account, a fairly basic question for an  
12   American taxpayer, that he knows nothing about. That's  
13   just not believable.

14           He also has -- and this is relevant  
15   circumstantially -- he has a powerful motive to conceal  
16   that bank account in Pakistan, both from the IRS and  
17   from his CPA. And that's because once he says, oh,  
18   yeah, I've got a business account in Pakistan, I'm  
19   wiring 1.2 million to it and it pays expenses over there  
20   and that's DigitalNet Pakistan, then he's got someone  
21   asking questions and saying, okay, show me the expenses  
22   you're claiming, like the \$435,000 in one year of R&D.  
23   Right?

24           And so what Mr. Alrai has in the existing  
25   world, where no one ever acknowledges a Pakistan bank

1 account, is he's got complete control. He always has  
2 complete control. And the control is here is everything  
3 about my expenses and you have to take my word for it  
4 and it's based on the Pentucket account and no mention  
5 that there is another account over there, that if any of  
6 these R&D expenses or payroll expenses, if any of those  
7 are real, they would be in his bank account.

8 But he conceals the bank account and the fact  
9 that he's got that motive and that it's consistent with  
10 all of his other operating in this case is also  
11 evidence.

12 He -- two other points. He sent his own CPA  
13 the IRS website about FBARs. Now, that didn't happen  
14 until 2019.

15 THE COURT: Yeah.

16 MR. DAVIS: It didn't happen until after he  
17 was charged, but it still shows, once again, this is an  
18 adult, very much an adult, a very smart adult --

19 THE COURT: Yeah.

20 MR. DAVIS: -- who -- who is perfectly able to  
21 understand what he understands when his tax form that  
22 he's signing says no.

23 And the last point is he did ask questions  
24 during -- during the scheme about -- about how the  
25 Kal Wahbe issue and about foreign income in Dubai. And

1     there was back and forth, there was an email about that,  
2     asking about the tax implications of foreign income and  
3     how to report that and how to pay that.

4             So he's certainly aware that overseas  
5     financial activity is going to have special rules that  
6     could apply, but he avoids that subject about the  
7     Pakistan account.

8             THE COURT:   Yeah.

9             MR. DAVIS:   So it's circumstantial, your  
10    Honor.  It's not as strong as the rest of the case,  
11    frankly, but it's still -- given that all inferences are  
12    taken in the light most favorable to the government,  
13    it's still sufficient under the Rule 29 standard.

14            MR. HARRINGTON:  And I just have one brief  
15    comment, Judge --

16            THE COURT:   Yeah.

17            MR. HARRINGTON:  -- in regard to the FBARs and  
18    I just want to highlight it for the Court.

19            It sounds like you've already honed in on  
20    this, but I just want to flag it in case, which is some  
21    of the documents that were provided -- you may recall on  
22    the tax documents and on the questionnaires, they were  
23    all left blank relative to the foreign bank accounts and  
24    the FBAR stuff.

25            And then there was a section where they were



1 filled where it says, no, you don't have them, and  
2 Mr. Terry had indicated those were autofill. If there  
3 was no response to it, they would autofill no.

4 So there was never any documentation of a  
5 response either yea or nay --

6 THE COURT: Yeah.

7 MR. HARRINGTON: -- and I just want to flag  
8 that for you.

9 Lastly, on the FBAR, that as you heard from  
10 Mr. Terry, they were filed, no taxes, no penalties went  
11 with it. And as was indicated when it was submitted,  
12 the reason that was given, which appears to -- I  
13 understand the government's circumstantial argument, but  
14 at least the statement that the defendant made, I was  
15 unaware I had to do it.

16 THE COURT: That's the problem I'm having.  
17 First of all, let me say, Mr. Davis.

18 That's an interesting argument you just made.  
19 You pointed me to some evidence -- you pointed to some  
20 evidence that is inculpatory that I, you know, hadn't  
21 put in that context. It's helpful.

22 One of the points you made, though, is that,  
23 you know, while you said there's no direct evidence of  
24 his knowledge, the problem is there is direct evidence  
25 of a lack of knowledge. That's why I'm struggling with

1 it. It's evidence that you put in, in candor, and you  
2 know, I think in -- to try to satisfy your burden, but  
3 there's direct evidence of a lack of knowledge and  
4 knowledge is part of the burden.

5 So, look, I'm not going to rule on it now. I  
6 just think -- I'm not saying anything more than I agree  
7 with Mr. Davis's point that it's not your strongest  
8 count, but that's something to think about there.

9 Let me ask --

10 MR. DAVIS: Can I --

11 THE COURT: Yeah, go ahead.

12 MR. DAVIS: Sorry. I was sitting down, but I  
13 hadn't finished because I wanted to talk about --  
14 respond to Mr. Harrington's other argument.

15 MR. HARRINGTON: I thought you were done,  
16 John. I apologize.

17 MR. DAVIS: Very briefly, Judge.

18 The defense is arguing generally that there  
19 was insufficient evidence of intent to -- to perpetrate  
20 a scheme to defraud United Way and Robert Allen Group.  
21 And, again, under all the other inferences, the  
22 government submits the evidence is overwhelming that  
23 Mr. Alrai intended to -- to work at least some economic  
24 harm on his employers.

25 THE COURT: Let me -- on that point, let me

1 interrupt you with a question. And I want to hear this.

2 I was just looking for it in your trial brief  
3 and I couldn't find it. And I know it's in here  
4 somewhere in one of your filings, where you made the  
5 point -- you've made the point in your brief, look, we  
6 don't have to prove unjust enrichment and we don't even  
7 really have to prove economic loss. But the way we're  
8 going to prove this, the way we're going to prove this  
9 scheme and intent, is I think it was you named three  
10 things. I think you said the markups, the nondelivered  
11 services, and one other thing.

12 Do you remember what I'm talking about here?  
13 I thought --

14 MR. DAVIS: Yeah.

15 THE COURT: -- there were three things.

16 MR. DAVIS: Yeah. The last is duplicate  
17 billing.

18 THE COURT: Duplicate billing, markups, and  
19 undelivered services, basically.

20 MR. DAVIS: Correct.

21 THE COURT: All right. That's the three?

22 MR. DAVIS: That's the three elements of loss  
23 as identified by Mr. Naviloff as making up the  
24 3.1 million.

25 And so, your Honor --

1 THE COURT: Go ahead.

2 MR. DAVIS: -- yes, the government does  
3 strongly contend that there is a significant loss; about  
4 half the money paid by United Way is a loss amount. But  
5 we also argue that we don't have to prove loss. We have  
6 to prove an intent to at least put United Way at a risk  
7 of loss, to do economic harm to United Way.

8 And that certainly occurred here, given that  
9 they hired a fledgling firm with no experience and, in  
10 some cases, no qualifications and certainly just signing  
11 these contracts put United Way and Robert Allen Group at  
12 a risk of loss, as Robert Allen Group rather bitterly  
13 discovered in its short time with DigitalNet.

14 But the other aspect of the -- the fraud,  
15 though, and the proof of the fraud is that there is --  
16 there is a kind of property that -- that is intangible  
17 rights. And there's not much left of it after *Skilling*,  
18 but there are good cases that we cited that Mr. Hunter  
19 knows a lot about that say that even after *Skilling*, it  
20 is a deprivation or can be a deprivation of a property  
21 right when a -- when a defendant knowingly and willfully  
22 deprives an employer of the right to control its own  
23 assets.

24 When the -- when the -- when the employer --  
25 when the employee secretly, deceitfully arranges things

1 so that United Way makes a decision and puts one -- you  
2 know, puts a whole lot of money out there for years, but  
3 has been deprived of a fair opportunity to make its own  
4 decision about how it wants to spend that money. And  
5 that's exactly what happened here, your Honor.

6 Just a couple more points. The defendant's  
7 main argument is, well, the contracts were fully  
8 performed. I would say quickly first, no, they weren't.  
9 The Court heard evidence that at least as to the -- the  
10 geographically dispersed high availability backup for a  
11 significant period, United Way's paying -- paying a good  
12 bit of money for that -- for that aspect of the service  
13 and they're not getting it.

14 They're not getting anything, because OVH and  
15 CloudConnect don't provide it. And -- and so, you know,  
16 two months after he's gone, they have a four- or  
17 five-day outage because they don't have that backup. So  
18 they didn't get what they bargained for.

19 I would also say, your Honor, even though  
20 there's a performance of a service, if the performance  
21 of the service is at a 1,300 percent upcharge, that's  
22 fraud. A 1,300 percent upcharge that is entirely driven  
23 by this man's own -- own acts.

24 And so, yes, things were -- things were  
25 accomplished in many cases, but that -- that -- what was

1 accomplished was -- was so often at a cost far in excess  
2 of what it was worth and what United Way should have  
3 been paying.

4 I would also say that the defense cites, well,  
5 United Way was satisfied and they quickly say, you know,  
6 various people thought oh, yes, it seemed pretty good.

7 Well, the reason for that is, as we said from  
8 the beginning, IT is a place where people are  
9 vulnerable, where companies are vulnerable, where the  
10 good people at the United Way need help and they need  
11 help from a trusted expert. And they hired this guy to  
12 be that expert.

13 And so, sure, for a lot of this, it seemed  
14 better, but what Pat Latimore also said was that it did  
15 seem better until they finally got a legitimate vendor  
16 after he's fired and John Meyer is there and then they  
17 can see, we get better service now at a whole lot less  
18 cost.

19 And I submit that United Way people who  
20 understand the changeover and what could have been with  
21 all that money spent and all that opportunity cost and  
22 spending it on DigitalNet and his bank accounts, they  
23 now know they didn't get good -- good performance.

24 Last thing, intent to defraud. Everything  
25 this man did for six years was concealed. He led a

1 double life to everyone he knew, including -- including  
2 DigitalNet employees like Nadeem Yousuf. Even at the  
3 end, he's still pretending. He's still pretending that  
4 if Nadeem Yousuf has a personnel matter, he's going to  
5 talk to them to find out. It became -- well -- and  
6 so -- and so he conceals and he lies.

7           He lies to -- he lies to CBP when he comes in  
8 the country, he lies on every invoice submitted to  
9 United Way on the email account and goes to the trouble  
10 of writing himself a separate email signed by Mohammad,  
11 just to show that -- that somehow he's not DigitalNet  
12 and there is some entity out here that's different.

13           And he uses people. He uses the people  
14 closest to him. He uses his dad. He uses his friends  
15 to be references. And -- and that concealment and that  
16 falsehood is at the heart of fraud. Fraud is deceit  
17 that is motivated by an intent to obtain property,  
18 property and money. And that's what he did here. And a  
19 reasonable jury could amply find sufficient proof of  
20 specific intent to defraud in this case.

21           I have a note from Mr. Hunter.

22           Last point, your Honor, is that, again, going  
23 back to the, well, the contracts were fully performed,  
24 the contracts are negotiated on both sides by the  
25 defendant. And so if there are terms being met, and

1     there are, they aren't terms that are set in an  
2     arm's-length -- in an arm's-length negotiation, a real  
3     contract. They aren't. They're set on -- they're set  
4     by one person who's on both sides of the equation.

5             THE COURT: Understood.

6             Can I ask you a question, Mr. Harrington?

7             MR. HARRINGTON: Yes, Judge.

8             THE COURT: Because I know you've got  
9     something you want to say. We'll take a break right  
10    after this exchange and you say what you want to say.

11            Understanding your argument correctly, both  
12    with respect to this motion and in general, here's how I  
13    understand it and I want you to tell me if I'm wrong  
14    about it.

15            Is it -- when you talk about things like  
16    markups, nondelivered services or nonperformance of a  
17    contract and then double billing, I understand -- in  
18    terms of nonperformance of a contract, that's just  
19    something the defendant denies. He says the contracts  
20    were performed. That's -- that's just -- you disagree.

21            On double billing -- on double billing and  
22    markups, which there's evidence of, I understood your  
23    argument not so much to be anything about those in  
24    substance, but that to the extent those things occurred,  
25    they weren't undertaken with an intent to defraud,



1 right?

2 A markup is what it is. You do the math.  
3 Whether or not it occurred, though, the government must  
4 prove that your client undertook it with intent to  
5 defraud and that is what the government has failed to  
6 prove. Is that your argument?

7 MR. HARRINGTON: It is, Judge.

8 THE COURT: That's what I thought.

9 Okay. The double billing -- I mean, the  
10 nonperformance is just denied, but the other two are,  
11 look, you can evaluate the evidence for what it is,  
12 Judge. The fact is, though, it doesn't prove an intent  
13 to defraud. Right?

14 MR. HARRINGTON: I think that's right.

15 THE COURT: Okay. I just want to make sure I  
16 understood.

17 Go ahead.

18 MR. HARRINGTON: And one of the other things,  
19 I was just handed a note from my colleague, is about the  
20 line of cases that are post-*Skilling* that talk about  
21 contracts and the breach of contract and a fraud scheme  
22 talk about having an intent to defraud at the time that  
23 the contracts were entered into.

24 And so I'd just flag that for your  
25 consideration as well. I think you can look at the

1       totality of the circumstances to inform your decision --

2               THE COURT:   Yeah.

3               MR. HARRINGTON:  -- but I also think you focus  
4       in on at time contracts are entered into.

5               THE COURT:  I do think that -- what do you say  
6       about the fact, though -- I guess here's the hard part  
7       of a bench trial.  The jury doesn't get to do this to  
8       you, I know.

9               But, I mean, yeah, you're right -- I accept  
10      the idea that if you're going to -- if you're going  
11      to -- if you're going to evaluate the contracts not  
12      being arm's length or whatever as a form of fraud,  
13      there's got to be intent at that time.

14              But if there's a failure to disclose the  
15      relationship and the affiliation with DigitalNet at that  
16      time, how could -- how can I say a jury couldn't find  
17      that intent?  Isn't the failure to disclose the  
18      relationship with DigitalNet very persuasive evidence of  
19      intent to defraud.

20              MR. HARRINGTON:  I don't think it is, Judge.  
21      I think it can be fairly found by the Court that that  
22      would be a breach of its fiduciary duty to the United  
23      Way.  There's a conflict form that was signed, I think  
24      for every year except for 2015, they couldn't locate it.

25              And so I think in that realm, the distinction

1 I would make or argue to you, Judge, is that that is  
2 more of a civil issue, not a fraud issue. If he  
3 breached his fiduciary duty, then obviously the United  
4 Way is well within its rights to terminate him, which  
5 they did, and if they thought that there were services  
6 that weren't rendered under the performance of the  
7 contract because of that breach of fiduciary duty, they  
8 would certainly have rights that they could pursue under  
9 the contracts if they chose. But I don't think it's  
10 necessarily because he didn't -- because he didn't  
11 disclose, that in and of itself is fraud.

12 Do I agree with you that you could potentially  
13 draw an inference from that? I think you could, because  
14 you have that right as the trier of fact. But I  
15 wouldn't say that it -- because there's an omission of  
16 failure to disclose that it is automatically fraud. I  
17 think you have to look a little deeper and my suggestion  
18 is the deeper look is the performance of the contracts.

19 THE COURT: Okay.

20 MR. HARRINGTON: And I know that's difficult  
21 because -- on one hand, you're looking at what's the  
22 fraud at the time of the contract, and I'm saying, you  
23 know, you need to look a little further down the road,  
24 but --

25 THE COURT: But subsequent conduct can inform

1 the question of intent.

2 MR. HARRINGTON: And that's argument to you,  
3 Judge.

4 THE COURT: Understood.

5 MR. HARRINGTON: The other things that I would  
6 bring up, Judge, just very briefly, is the government  
7 had talked about some law about the -- basically  
8 damaging or infringing on United Way's ability to  
9 control its assets. And sometimes you see that more  
10 commonly under, you know, the kickback schemes and  
11 there's a line of cases that talk about that.

12 And one of the things that there are a number  
13 of circuits, I think the Second and Sixth Circuit, I'm  
14 sure there's others as well, have talked about in this  
15 realm is that failure -- an infringement on the failure  
16 to control assets in and of itself is not enough. You  
17 have to have a little bit more.

18 And typically what they want you to see or as  
19 the trier of fact determine is has there been a tangible  
20 economic harm that goes with it. And I would suggest,  
21 again, that that's part of our argument that there is no  
22 tangible economic harm here.

23 So if you find that okay, yes, there was an  
24 infringement on the ability to control assets based on  
25 omissions or misrepresentations, you would still need to

1 go one step further to say, okay, do we have tangible  
2 economic harm here.

3 One other thing that I would bring up for you,  
4 Judge, is in regard to the aggravated ID theft -- I  
5 failed to bring this up -- I bring it up for your  
6 consideration, I know you're just going to take these  
7 matters under advisement -- is that in regard to -- it's  
8 Count 51, if I recall correctly, and it's the aggravated  
9 ID charge.

10 One of the things I would ask you to consider,  
11 and it is Count 51, Judge, is I would suggest that the  
12 government has failed to prove that case, again, with  
13 sufficient evidence. I point you to Exhibit 118, which  
14 I think is the exhibit admitted on this particular issue  
15 in there.

16 This particular charge is that they  
17 incorporate Counts 1 through 18 and then they say that  
18 without lawful authority or means of identification of  
19 another person, namely, his father, Mac Chaudhary, from  
20 MC's email account at DTS to an officer that falsely  
21 claimed an attachment, among other things, DTS had  
22 105-plus global clients and included a false list of  
23 sample customers at DTS.

24 So there's a very specific email that they're  
25 referring to that was shown to Mr. Chaudhary.

1 Mr. Chaudhary's testimony is that he does recall the  
2 substance of the emails, that he believes he sent those  
3 emails, that that information was provided to him by the  
4 Lahore office, and that he incorporated that  
5 information.

6 And that -- I think the government has failed  
7 on that count to prove that that email and the content  
8 of that were sent by my client as alleged in the  
9 indictment. So I think, based on that, that charge as  
10 well suffers.

11 Thank you, Judge.

12 THE COURT: All right. We'll take the morning  
13 break.

14 (Recess taken from 10:52 a.m. until 11:12 a.m.)

15 THE COURT: All right, Mr. Harrington. You  
16 may proceed.

17 MR. HARRINGTON: Thanks, Judge.

18 THE COURT: The motion's under advisement.

19 MR. DAVIS: Judge, the government does object  
20 to the ag ID motion and, briefly, on the ground that --

21 THE COURT: The what motion?

22 MR. DAVIS: The aggravated ID theft.

23 THE COURT: Okay.

24 MR. DAVIS: So we do object to that. I'm  
25 happy to say more if the Court needs it, but if --

1 THE COURT: No.

2 MR. DAVIS: -- it's under advisement --

3 THE COURT: It's under advisement.

4 MR. DAVIS: Okay.

5 THE COURT: And I assumed you objected to it.

6 MR. DAVIS: Thank you.

7 THE COURT: All right. Let me just think for  
8 a moment.

9 So the motion's under advisement. We did find  
10 some authority, believe it or not, we just looked, that  
11 suggested that Rule 29 is not appropriate for --

12 MR. DAVIS: Oh, really.

13 THE COURT: However, I think Mr. Harrington's  
14 argument makes a lot of sense. The decision on a Rule  
15 29-type argument could inform your decision about how to  
16 proceed with your case, so I -- I think it's appropriate  
17 and, therefore, I entertained the motion as appropriate  
18 and I took it under advisement.

19 MR. HARRINGTON: Thank you, Judge.

20 THE COURT: Yes.

21 MR. HARRINGTON: And just out of curiosity,  
22 Judge, the authority for that, did it come out of the  
23 First Circuit, do you know?

24 THE COURT: We'll share it with you. I'll  
25 print it up.

1 Oh, no, don't think it came out of the First  
2 Circuit. Well, there's some. Let's see here. No, not  
3 mostly.

4 MR. HARRINGTON: Okay.

5 THE COURT: No.

6 MR. HARRINGTON: The defense calls to the  
7 stand Kevin Kennedy, your Honor.

8 THE COURT: So you don't have to fire any  
9 associates, Mr. Harrington.

10 MR. HARRINGTON: Merry Christmas.

11 THE CLERK: Good morning, sir. How are you  
12 today?

13 THE WITNESS: I'm fine. How are you?

14 THE CLERK: Very well. If you could take the  
15 stand.

16 Please raise your right hand.

17 **KEVIN KENNEDY**, having been first duly sworn,  
18 testified as follows:

19 THE CLERK: For the record, please state your  
20 full name and spell your last name.

21 THE WITNESS: Kevin Clement Kennedy,  
22 K-e-n-n-e-d-y.

23 THE CLERK: Thank you. Please be seated.

24 DIRECT EXAMINATION

25 BY MR. HARRINGTON:



1 Q. Good morning, Mr. Kennedy.

2 A. Good morning.

3 Q. I'd like to first talk to you a little bit  
4 about your educational background.

5 Could you tell the Court a little bit about  
6 your education?

7 A. I received my bachelor's in accounting some  
8 time ago, in the 1990s. I'm also a certified public  
9 accountant, I have been for about 25 years now, which  
10 includes a certain level of education requirement,  
11 including ongoing education requirements.

12 I'm also a certified fraud examiner and that  
13 also requires certain education requirements for  
14 purposes of not only ongoing education, but tasks to  
15 obtain your certification.

16 Q. Do you serve on any boards relative to your  
17 role as a CPA and a certified fraud examiner?

18 A. Yes. As a certified public accountant, I  
19 serve on the board of trustees for the New Hampshire  
20 Society of CPAS. I'm also one of the co-chairs on the  
21 Tax in the Legislation committee.

22 As a certified fraud examiner, I'm on the  
23 board for the New Hampshire Chapter of the Association  
24 of Certified Fraud Examiners.

25 Q. Okay. If you could, for the Court, explain a

1 little bit about your employment history as it pertains  
2 to being a CPA and certified fraud examiner.

3 A. Well, so I've been a CPA, as I mentioned, for  
4 25 years. I've worked both in public and private  
5 practice.

6 For the last 15 years or so, I've been  
7 self-employed. I'm currently a partner at Maloney &  
8 Kennedy, a CPA firm. We've been together for over  
9 ten -- partners for over ten years now. And so I -- my  
10 function in that capacity, of course, is as a partner.

11 Relative to my certified fraud activity, I get  
12 engaged by law firms or public defenders or other people  
13 to assist, usually with fraud issues.

14 I also am involved with audits, our company  
15 does financial statement audits, which incorporates a  
16 certain comprehension relative to fraud which we have to  
17 apply when using generally accepted auditing standards.

18 Q. Have you testified before in New Hampshire as  
19 an expert?

20 A. I have.

21 Q. And what types of cases have you testified in?

22 A. Largely, they've been restitution cases.  
23 Largely, there's either an issue of a fraud or some sort  
24 of matter in which we have to determine was there a loss  
25 and, if so, how do we calculate that.

1 MR. HARRINGTON: Okay. Your Honor, I'd tender  
2 this witness as an expert in the area as a CPA and  
3 certified fraud examiner.

4 MR. HUNTER: No objection.

5 THE COURT: He's qualified and may testify and  
6 form an opinion.

7 MR. HARRINGTON: Thank you, Judge.

8 Q. Now, Mr. Kennedy, I understand that you've  
9 reviewed documentation in this case regarding United  
10 States vs. Imran Alrai. Is that correct?

11 A. That's correct.

12 Q. And what documentation have you reviewed?

13 A. Well, there was a significant amount of  
14 materials that were provided. They include bank  
15 statements, invoices, certain amount of emails. Much of  
16 the documentation was provided to me via counsel from  
17 the prosecution and it includes, of course,  
18 Mr. Naviloff's report.

19 Q. Okay. And did you issue your own report  
20 after you had reviewed these items and, in particular,  
21 Mr. Naviloff's report?

22 A. I did.

23 Q. Okay. Based on your review, did you have any  
24 issues or concerns relative to the RSM report and the  
25 information you reviewed that you can express to the

1 Court?

2 A. Yes. So, broadly speaking, there were a few  
3 areas, five or six areas, where I had some concerns over  
4 the RSM report. And in general respects, one, the  
5 report failed to mention the positive performance  
6 reviews that Mr. Alrai got during his tenure at the  
7 United Way.

8 There wasn't any reference to the IT system  
9 that was in place prior to Mr. Alrai being hired which,  
10 based on some of the documentation I read, there were  
11 issues with the IT system.

12 There wasn't any reference in the report  
13 relative to the budget numbers that existed prior to  
14 Mr. Alrai's employment, which I understand were roughly  
15 in line with his time there over the course of his  
16 employment with the United Way.

17 There -- there wasn't much indicated relative  
18 to the management at the United Way and the fact that we  
19 appear to have well-educated, experienced individuals  
20 who did have some oversight relative to the budgeting  
21 process.

22 And, of course, there was nothing referenced  
23 that I recall in the Naviloff report that identified the  
24 fact that the budget was approved, I think, by other  
25 layers of management at the United Way and, of course,

1 invoices, even though they included Mr. Alrai's  
2 approval, also had other signatures on it that appeared  
3 to approve the invoices for payments.

4 Q. Okay.

5 A. And, lastly, based on the report, I was  
6 concerned relative to Mr. Naviloff's qualifications, as  
7 you were, relative to the IT system environment and his  
8 assessment of it, particularly where it indicated --  
9 seemed to indicate that he himself was not an IT expert.

10 Q. So let's talk a little bit more in detail  
11 about the summary that you had just indicated in those  
12 points.

13 Can you point to some specifics as you go  
14 through that summary?

15 A. All right. So relative to the performance  
16 review items, it appears as though Mr. Alrai received  
17 performance reviews twice a year and in most of these  
18 that I read, he received usually at least achieves  
19 expectations or excels and he received usually some very  
20 positive comments on it.

21 And I won't read all of them that are  
22 referenced in my report, but just to acknowledge a  
23 couple of them, on a June 2013 manager performance  
24 summary, Mr. Alrai was acknowledged -- "the significant  
25 progress with the daunting challenge of the numerous

1 aspects of the IT system at the United Way."

2 In another performance review in 2000 -- for  
3 fiscal year '14, he received positive comments and it  
4 was noted that he had gone through various  
5 implementations and negotiated effectively with vendors  
6 and had a good handle on his budget and knows how to  
7 best utilize it for the greatest impact.

8 Of course, he was ultimately promoted to  
9 vice-president during his tenure there, which seems to  
10 relay some indication of his success at the company.

11 In the announcement relative to his being  
12 vice-president, it was noted that there were significant  
13 efficiencies to both developmental and A&F and that  
14 technology is a critical component of the UM -- United  
15 Way's future success.

16 Q. And what did you take that term A&F to mean,  
17 development and A&F?

18 A. Oh, gosh. I'm sorry, I don't recall. I did  
19 know. I don't know now what the acronym stands for.

20 Q. Does administration and finance --

21 A. That's right. That's what it stands for.  
22 Thank you.

23 In a fiscal year '15 review, it was noted he  
24 strives to deliver excellent service, delivery of wide  
25 desktop upgrades, the mobile platform, Google apps for

1 nonprofits, and that given the limited resources  
2 available, Imran manages his budget well.

3 Q. Okay.

4 A. And, again, some other items, there was a  
5 midyear performance review in 2000 -- January 2017 where  
6 it was noted he accomplished a number of key projects  
7 and initiatives. And also in fiscal year '17, he  
8 received positive comments including he was an effective  
9 partner and worked on a number of major application  
10 enhancements.

11 Q. Okay. In regard to the status of issues with  
12 IT, you indicated that was another area?

13 A. Uh-huh.

14 Q. Could you point the judge to some specifics  
15 that you had reviewed relative to that --

16 A. Yes.

17 Q. -- issue?

18 A. So there was a representation by a Mr. Azim  
19 Mazagonwalla, I believe it's pronounced, forgive me if  
20 I've mispronounced it. He was the senior director of  
21 treasury services and accounting policy. And I guess he  
22 was first hired in 2010 and he had noted, I believe in  
23 an interview: The IT vendor in place at the United Way  
24 during the time was costing almost \$2 million a year and  
25 there were a lot of complaints regarding the service

1 provided by that vendor.

2 Mr. Naviloff, prior to when he was working for  
3 the United Way directly, he issued or there -- was  
4 provided some presentation that he prepared. And on it  
5 I believe there was a slide that indicated multiple  
6 slide -- personnel who indicated the prior IT system  
7 never truly functioned in a reliable manner.

8 I had also been given information that the  
9 United Way outsourced a critical part of their internal  
10 computer system and there were reference -- technical  
11 references to other vendors, CWAIN and Navisite.

12 So it appears that in conjunction with the  
13 performance evaluations that he got that he was able to  
14 take a system for which there appears to be complaints  
15 and was able to successfully migrate it into something  
16 which allowed them to give him very positive performance  
17 reviews.

18 Q. Now, closely associated with this you also  
19 made some observations relative to budget comparisons --

20 A. Uh-huh.

21 Q. -- is that correct?

22 A. That's correct.

23 Q. Okay. And could you tell the judge a little  
24 bit about that? And in a moment we'll pull up a visual  
25 as well.



1           A.     All right. So I was provided a spreadsheet  
2     that seems to be a comparison of the United Way IT  
3     budget to actual. And, you know, the bottom line  
4     essentially is that based on the schedules, while there  
5     were variances from year to year, the budget expense was  
6     about 2.5 percent over budget.

7                     So the variance to budget seems to have been  
8     fairly much in line over the course of this time frame.

9           Q.     And what do you mean by that, when you're  
10    talking about the variance to budget and the time frame,  
11    more specifically?

12          A.     All right. So the time frame was 2014 to 2018  
13    on this schedule that I was provided. And essentially  
14    it provided a budgeted number and it compared it to  
15    actual expenses.

16                    So if your budget is a million dollars and you  
17    spend a million dollars, you've met the budget for the  
18    year. If you spend a million-one, you've gone over  
19    budget; if you spend 900,000 you are under budget.

20                   MR. HARRINGTON: Okay. If you could bring  
21    that --

22          Q.     And I'm showing you a document. This is  
23    Bates-stamped number 18R148 RSM 00087.

24          A.     Uh-huh.

25                   MR. HARRINGTON: I think you have that,

1 Counsel, so it'll be admitted as an exhibit.

2 Q. I'm showing you this document. Is this in  
3 line with what you were just talking about?

4 A. Yes. So this was --

5 Q. And before we do that, do you recognize what  
6 this is relative to your review in this case, whose  
7 report this is?

8 A. Yes. So this -- this was the RSM -- as you  
9 can see from the bottom right, it's got RSM referenced  
10 there.

11 So this was a slide presentation prepared by  
12 Mr. Naviloff. I believe it was in association with an  
13 insurance claim.

14 Q. Okay.

15 A. And, you know, the -- the slide is very well  
16 done; it presents what it seems to do, wants to do. He  
17 notes that the IT budget during the three-year period  
18 prior to Mr. Alrai's employment ranged from 1.0 to 1.4.  
19 He specifically indicates that Mr. Alrai reduced the  
20 annual IT budget by 125 in his first year and actually  
21 spent 7K less than budget. And that there was an  
22 increase over the fiscal year period.

23 But generally, as you see, even though there  
24 was an increase, you know, 2012, it was prior to  
25 Mr. Alrai's being hired -- I believe he was hired in

1 2012, but that would have been a budget in place prior  
2 to him being.

3 So it went down in 2013. And as you see, the  
4 actual expenditures are generally in line with the  
5 budget amount. There is a notable discrepancy maybe in  
6 2018 and I'm unclear if there were just some other  
7 projects that occurred during that particular budget  
8 period.

9 Q. And this slide also indicates that the  
10 increase in spending of seven percent occurred over six  
11 fiscal years, correct?

12 A. That's correct.

13 Q. And it also indicates that Mr. Alrai only  
14 exceeded budget one time by less than \$10,000 and that  
15 was in fiscal year 2018, correct?

16 A. That's correct.

17 MR. HARRINGTON: Okay. If you could go to the  
18 next page.

19 Q. This is also -- this is the next page of that  
20 same document. Can you explain what this page is  
21 relaying to you?

22 A. Yes, I believe this is the next page in the  
23 same presentation that Mr. Naviloff prepared. And as it  
24 states, IT expenditures were less than budget for four  
25 of the six years that he managed the department; he

1 spent one percent less than budgeted over the six-year  
2 period. And then he references, of course, the expenses  
3 increasing over a seven-year period.

4 Q. Okay. So this is actually indicating taking  
5 these years as a whole, 2013 through 2018, that the IT  
6 expenditures under Mr. Alrai's tenure were actually one  
7 percent less than what was budgeted?

8 A. That appears to be the case, yes.

9 Q. Okay. In reviewing the documentation in this  
10 case in regard to procurement, were you able to make any  
11 observations regarding the procurement and payment  
12 process in this case?

13 A. I did. So I -- I viewed various documentation  
14 that indicated to some degree the involvement of people  
15 at the United Way.

16 So it -- there was a document from Jack  
17 Rotondi, the vice-president who it was stated he was  
18 heavily involved in the vetting of contracts. Diane  
19 Dragoff, the senior director of organization operations  
20 was apparently involved in the procurement process and  
21 she was referenced as a procurement specialist on the  
22 document that I reviewed.

23 There appears to have been committees and  
24 multimember people from other departments that were in  
25 place. I made -- I was -- I read reference to a Stan

1 Burrows, who had the oversight role on an IT Advisory  
2 Council for the RFP process and that there appears to  
3 have existed an IT oversight council, which I believe  
4 had five or six members consisting of CIOs and chief IT  
5 officers at a number of different companies who worked  
6 on the RFP details.

7 I also noticed that United Way had written  
8 policies for procurement, including fixed asset  
9 procedures and procurement questions. There was a whole  
10 Q and A section on, well, what if the purchase is over  
11 \$10,000. And so --

12 Q. Is the point that you're saying that there was  
13 a review process, a checks and balances process, in  
14 place from what you saw?

15 A. Based on the documentation I saw, there  
16 certainly were people in place who seemed to have been  
17 involved in the budgeting process and the procurement  
18 process.

19 Q. Now, let me ask you, in regard to  
20 Mr. Naviloff's report, did you have any other comments  
21 regarding the services provided and loss calculations?

22 A. Well, so in his report, Mr. Naviloff's  
23 references to the assessment of the IT system struck me  
24 as rather vague. He did make reference to the fact that  
25 he had IT professionals at his firm and in his report he

1 also references discussions with Mr. Meyer and other  
2 people at the United Way.

3           However, the details relative to those  
4 discussions or that analysis weren't really referenced  
5 in the report. You know, he didn't mention any specific  
6 names or what their qualifications were and he didn't  
7 mention what the nature of those discussions were.

8           So it wasn't clear to me, based on the report,  
9 who he spoke to, what their qualifications were, and  
10 more specifically, what exactly was their involvement.  
11 There was no independent reference to I spoke to this  
12 individual at my firm who has these qualifications and  
13 this is what they contributed. He seemed to just sum  
14 everything up by saying, I spoke to IT people and they  
15 said this is the same thing or they were involved, in my  
16 understanding.

17           So in reading the report, I was rather  
18 concerned about it.

19           Continuing that on, I was present for  
20 Mr. Naviloff's testimony yesterday where he seemed to  
21 better identify who the people were and to some degree  
22 their qualifications. Again, I wasn't very clear what  
23 was their involvement; was it simply a review of a few  
24 pieces of paper in which they said, oh, yeah, that's the  
25 same thing, it's apples to apples, or did they -- did

1     they actually say, oh, no, this -- this comparison here,  
2     for instance, the hosting and infrastructure as a  
3     service, is exactly this and here's why. And so I'm not  
4     very clear or comfortable that the -- that -- to what  
5     extent that analysis was done.

6             And even beyond that, the analysis -- my  
7     understanding of what I've read and from Mr. Naviloff's  
8     testimony is the analysis was largely based on the  
9     paper, the comparison of contracts and things like that,  
10    the invoice review, and yet he did acknowledge that --  
11    if I'm recalling his testimony correctly -- nobody  
12    contacted any of the other service providers directly.  
13    The system at the time was not preserved and so there  
14    wasn't an analysis done by him or any of the IT  
15    professionals he had in his firm.

16            Q.     And let me stop you just briefly --

17            A.     Sure.

18            Q.     -- because you referenced that the system  
19    wasn't preserved. What do you mean by that?

20            A.     Well, I'm also not an IT specialist, so I  
21    can't speak too technically about it, but my  
22    understanding is that in consideration of a litigation  
23    matter, you try to preserve the environment exactly as  
24    it is so that --

25            Q.     When you're talking about the environment,

1 you're talking about the IT environment?

2 A. The IT environment. And, again, I can't speak  
3 technically as to, well, what does that mean, but, you  
4 know, it's like a crime scene, I guess; you know, you  
5 try to preserve everything at the time.

6 And my understanding is that that wasn't --  
7 whatever the servers were, the backup system, the  
8 management system, I can't tell you, but my  
9 understanding is that was all changed over the course,  
10 after Mr. Alrai left. I believe Mr. Meyer altered the  
11 systems there. And so what was exactly in place is not  
12 available for analysis or was not available for analysis  
13 by Mr. Naviloff and certainly wasn't used by him based  
14 on his testimony or his team and it certainly wasn't  
15 available to -- to us, to me.

16 Q. What comments can you make relative to the  
17 personal enrichment testimony that Mr. Naviloff had made  
18 referencing and including funds received by DigitalNet  
19 from both United Way and Robert Allen?

20 A. So there's a few comments that I just noted  
21 relative to his presentation.

22 Of course, Mr. Naviloff acknowledged that he's  
23 simply using his professional opinions to determine the  
24 number of people that were in, say, Pakistan providing  
25 support and he -- in the presentation yesterday, he was



1 provided subsequent information regarding the payroll  
2 information and so he extrapolated a number based on  
3 what information he had of what the anticipated payroll  
4 would be in Pakistan.

5 And so, first, I'm not sure that that analysis  
6 is quite complete. But he mentions that we have these  
7 people out there and he doesn't quite know how many  
8 there is. And I don't know how many there is, though  
9 what little understanding I have about IT systems, it  
10 did seem odd that there were so few people supporting  
11 the system, which I understand -- and, again, I can't  
12 speak technically about it.

13 But beyond that, to the extent that you have  
14 people someplace, you know, they have other costs. Now,  
15 he mentioned he did determine rent, but I would also  
16 presume the same individuals, how many there are, would  
17 require other things like hardware, software. I presume  
18 they're working in a building that has utilities. There  
19 could be other costs. So that was one concern.

20 Mr. Naviloff also expressed that, you know, he  
21 saw these personal expenditures which he used to  
22 determine the personal enrichment -- oh, I forgot to  
23 mention, on his determination of personal enrichment,  
24 if I'm recollecting what he did, he included the  
25 \$1.2 million that was transferred to the Pakistan

1 account to come up with this final \$3.7 million number,  
2 but then later on he acknowledged there was a payroll  
3 number that he ultimately calculated, but I don't think  
4 he actually took that out of his personal enrichment  
5 number.

6 So I -- if nothing else, I think his personal  
7 enrichment number was overstated by at least this amount  
8 he calculated to be what would have gone for payroll  
9 unless he's taking another position relative to that  
10 payroll.

11 And, of course, that 3.7 also included the  
12 Robert Allen income, which would have produced some  
13 level of profitability presumably. So that 3.7 million,  
14 of course, is not just the United Way, though he does  
15 make reference to the fact that that is -- Robert Allen  
16 is a source of that.

17 Beyond that, in terms of the personal  
18 enrichments, he -- he did even mention the credit card  
19 charges and the personal cost for that. The only thing  
20 I'm unclear of is when you're a sole proprietor, a Form  
21 1040 Schedule C, the entity is something of an extension  
22 of the owner. It's different than an S Corp. and a C  
23 Corp.

24 So as a sole proprietor makes money, they're  
25 allowed to draw the money out of the company and a draw

1 is not a taxable event because the entity income is  
2 taxed directly to the sole proprietor. So it was  
3 unclear to me relative to these credit card charges  
4 which are done on a personal credit card -- I'm sorry,  
5 on a business credit card -- were these actually used as  
6 deductions on the tax return.

7 Certainly the business credit card appears to  
8 have been used and if you accept that everything that  
9 Mr. Naviloff identified is personal, which, again, is --  
10 he's somewhat speculating, airfare and things like that  
11 on some of the items. It's possible that they weren't  
12 used to -- as a deduction on the tax return and as such  
13 it wouldn't be necessarily -- I have several proprietors  
14 who do use a company credit card for personal costs.  
15 They take it as a draw, which is perfectly acceptable to  
16 the IRS.

17 Q. And that's the --

18 A. And one of the reasons they do it is they like  
19 to build up points on their credit card or something  
20 like that.

21 Q. And that was the question I had. In that  
22 situation you've described as taking a draw, that is an  
23 acceptable method under the IRS laws?

24 A. Yes. The IRS wouldn't necessarily be  
25 concerned of the fact that a company credit card was

1 used for something personal.

2 Q. The issue is whether or not it's claimed as an  
3 inappropriate or an appropriate deduction?

4 A. Deduction, that's correct.

5 Q. Did you make some further observations that  
6 you can relay to the Court regarding your assessment in  
7 this matter?

8 A. The only other thing that I think I'd like to  
9 contribute, you know, I did review the tax returns,  
10 which I understand Ms. Terry was here and provided them.

11 Relative to this same item, relative to the  
12 personal expenses, you know, I also, like Mr. Naviloff,  
13 I didn't perform an audit of any kind of the  
14 transactions, but Ms. Terry appears to be capable. My  
15 reading of the tax work papers, including emails,  
16 implies that she made inquiries relative to the  
17 appropriateness of deductions and allocations of things  
18 and so I have no reason to believe that those numbers  
19 are necessarily inaccurate.

20 So if you take those numbers over a four- or  
21 five-year period and you come up with a net profit, the  
22 net profit was about 32.5 percent.

23 Q. Okay. So --

24 A. And --

25 Q. -- I want to stop you there briefly --

1           A.     Sure.

2           Q.     -- because we've heard some characterization  
3 of, you know, 900 percent markup, you know, things of  
4 that nature. You're going more over to the tax return  
5 and what the documents show as far as reported income  
6 that was received by Mr. Alrai, correct?

7           A.     That's correct.

8           Q.     And in that regard, I'd like you to proceed  
9 with that, relative to what the profit, if I'm using the  
10 correct terminology, was.

11          A.     Uh-huh. So essentially the net profit that I  
12 was calculating was essentially just to take the bottom  
13 line, the taxable income, that was included on the  
14 return, which, of course, might exclude deductions that  
15 are not allowed by the IRS, 50 percent meals and  
16 entertainment.

17                 And so I basically said, well, if you took all  
18 of the receipts for each of these years and then you  
19 take the bottom line and you simply divide the bottom  
20 line by the receipts, what are you coming up with as a  
21 net profit on the entire -- based on the tax returns.  
22 And that came out to about 32.5 percent over the  
23 five-year period. There were fluctuations every year.

24                 MR. HARRINGTON: Okay. Your Honor, I don't  
25 have any other questions for Mr. Kennedy.

1 THE COURT: Okay.

2 CROSS-EXAMINATION

3 BY MR. HUNTER:

4 Q. Good morning, Mr. Kennedy.

5 A. Good morning.

6 Q. So I just want to start with a few questions  
7 beginning where you left off regarding your analysis of  
8 Mr. Alrai's tax returns.

9 So you're saying you relied on those tax  
10 returns as having true statements about Mr. Alrai's  
11 expenses and income?

12 A. That's correct.

13 Q. Did you do any sort of analysis of the tax  
14 returns and underlying records to test that assumption?

15 A. No, only the -- there was supporting  
16 documentation and so relative to -- I saw some emails  
17 where there were inquiries about expenses, but other  
18 than that, no. As I stated, I didn't do an audit.

19 Q. Okay. And so you didn't analyze Mr. Alrai's  
20 bank records to confirm, for example, that the cost of  
21 goods sold actually represented costs of goods sold and  
22 wasn't just an interaccount transfer between Mr. Alrai's  
23 many business accounts?

24 A. That's correct.

25 Q. So, essentially, you're taking Mr. Alrai at

1 his word?

2 A. I'm taking the tax returns prepared by his  
3 professional --

4 Q. Right.

5 A. -- and Mr. Alrai, yes.

6 Q. Of course.

7 Can we pull up Exhibit 207a? Okay. And  
8 here -- can we zoom in on that, please, Ms. Sheff.

9 So these are expenses and other income  
10 provided by Mr. Alrai to his accountant?

11 A. Uh-huh.

12 Q. Do you see he has a lot of donations and  
13 deductions, travel expenses?

14 A. Yup.

15 Q. Total R&D projects, R&D-related IT projects,  
16 he takes a huge deduction.

17 Again, you're assuming DigitalNet was actually  
18 doing R&D and IT projects?

19 A. Yes.

20 Q. We have business travel expenses deducted.  
21 He's taking a deduction for everything, right?

22 A. Well, I -- what do you mean by everything? I  
23 believe everything on this list, though I don't recall  
24 specifically tracing this to the tax return.

25 Q. Okay.

1           A.     But potentially all of this was listed as a  
2     deduction, if the source of this is from the work papers  
3     of the accountant, which I --

4           Q.     Yeah.

5           A.     -- it looks like it was.

6           Q.     So as a business deduction for DigitalNet, we  
7     have the Methuen apartment rental condo fee and  
8     maintenance for that apartment?

9           A.     It's listed as rental property. So if --

10          Q.     Yup.

11          A.     -- it was listed as rental, then -- on the  
12     Schedule C, then yes. Again, I haven't traced that  
13     number.

14          Q.     Of course, of course. Internet access for his  
15     home office is listed?

16          A.     Is which line? I'm sorry.

17          Q.     Right here.

18          A.     Internet access for home office, right.

19                 Well, that's labeled home office utilities and  
20     so there's a business use of home deduction on the tax  
21     return where the cost of certain things are allocated  
22     based on the business use percentage.

23                 And so I believe that because that's listed as  
24     home office that those total costs are not included on  
25     the Schedule C, but are apportioned based on the



1 business use portion of the home.

2 Q. Of course. Yeah.

3 Can we go to the next -- I guess go back to  
4 207, Ms. Sheff. This is only a one page exhibit.

5 MS. SHEFF: 207b maybe?

6 MR. HUNTER: We'll hone in on the right page.  
7 I'll move on to something else here for now.

8 Q. So, Mr. Kennedy, did you review -- in terms of  
9 assessing --

10 Oh, actually, let's try 207b. Yes, let's try  
11 that.

12 Okay. Here we go. This is the client  
13 organizer.

14 A. Uh-huh.

15 MS. SHEFF: That's not it.

16 MR. HUNTER: Never mind.

17 MS. SHEFF: Take it down?

18 MR. HUNTER: Yup.

19 Q. So you testified a little bit about the  
20 procurement process at United Way and you reviewed  
21 certain documents showing that there were processes and  
22 procedures in place to make sure that contracts were  
23 entered into legitimately; is that correct?

24 A. Yes.

25 Q. And you'd agree with me that having a good

1 procurement process is important for a business to make  
2 sure that they're engaging in an arm's-length  
3 transaction --

4 A. That's --

5 Q. -- in entering into a contract; is that right?

6 A. It's good practice, right.

7 Q. And part of that is so that the business knows  
8 what they're getting into when they're entering into a  
9 contract, right?

10 A. It provides for assessment of the procurement  
11 beyond one person.

12 Q. Right. Yeah, you want more than one person  
13 involved in making the decision when a business is going  
14 to be entering into a contract for -- in this case, it  
15 ended up being over a million dollars a year, right?

16 A. That's correct.

17 Q. You want to make sure there's appropriate  
18 oversight, right?

19 A. It's, again, good practice.

20 Q. Yeah. And you want to make sure that you're  
21 hiring a -- you know the qualifications of the vendor  
22 and the competing vendors before you pick which one  
23 you're going to hire, right?

24 A. In an RFP process, yes.

25 Q. Yes, I -- exactly. I'm referring to an RFP

1 process --

2 A. Sure.

3 Q. -- which is what I believe you testified  
4 about; is that right?

5 A. That they're -- also in regards to the budget,  
6 there were -- appears to be some level of oversight  
7 relative to the final approval of the IT budget.

8 Q. Yes. And when -- and I do want to talk to you  
9 a little bit about the budget, but right now I just want  
10 to talk about the IT procurement -- or the procurement  
11 process.

12 A. Sure.

13 Q. And part of that is so you can assess  
14 competing bids, right, and you know which one -- what  
15 services each bid's providing and how much they're  
16 charging for those services in making your decision?

17 A. That's usually part of the procurement  
18 process, to have competing bids.

19 Q. And it's important for a company, in making  
20 that decision, to have an accurate understanding of what  
21 the options are; is that right?

22 A. It can be, yes.

23 Q. Would it be -- is it not helpful to have  
24 accurate information?

25 A. Of course it's helpful to have accurate

1 information.

2 Q. And I think you testified that there were  
3 people involved in the procurement process like Stan  
4 Burrows.

5 A. That's correct.

6 Q. Did you -- are you aware of Mr. Burrows'  
7 testimony that he never reviewed any RFP responses?

8 A. No, I'm only aware of the document that I read  
9 and I don't know who provided -- I believe it was an  
10 interview, though I don't know if it was Stan Burrows or  
11 not. And, no, I wasn't here for any of the testimony  
12 provided by any of the United Way people.

13 Q. Okay. So you're not -- you're not aware that  
14 Stan Burrows testified that he wasn't part of that RFP  
15 process --

16 A. No.

17 Q. -- in terms of reviewing --

18 A. That's correct.

19 Q. And that, in fact, he'd asked Mr. Alrai if he  
20 could assist and Mr. Alrai told him, no, he didn't want  
21 him to review the RFP responses.

22 A. Again, I wasn't here for his testimony, so --

23 Q. Right. So you don't know that?

24 A. That's correct.

25 Q. And you mentioned a report of interview from

1 Azim Mazagonwalla, I believe is the last name, right?

2 A. Yes.

3 Q. And you -- and I think you testified regarding  
4 him talking about problems with the prior IT vendor,  
5 which we'll get to, but, right, you remember that --

6 A. Yes.

7 Q. -- testimony?

8 And, again, are you aware that he testified  
9 that, likewise, when -- because he was part of the  
10 procurement -- the RFP process, that he also didn't  
11 review the RFP responses?

12 A. Again, I wasn't here for --

13 Q. You --

14 A. -- any of the testimony of --

15 Q. You weren't here for that, so you don't -- you  
16 don't know.

17 And were you -- were you aware that he  
18 testified repeatedly that throughout the procurement  
19 process, he was relying on Imran Alrai as the IT expert?

20 MR. HARRINGTON: Judge, I'm just going to  
21 object. This witness wasn't here for any of that  
22 testimony.

23 THE COURT: Yeah.

24 MR. HUNTER: And, your Honor, I think it goes  
25 to the factual basis of his opinion that the --

1           THE COURT: I guess the way you asked it  
2 then -- you could go with a hypothetical and ask if it  
3 would change his view in any way, but --

4           MR. HUNTER: I'll --

5           THE COURT: -- flogging him for not being  
6 here, not really helpful.

7           MR. HUNTER: Sure. Understood, your Honor.

8           THE COURT: I know. I'm not -- you know.

9           Q. And, Mr. Kennedy, I truly don't intend to flog  
10 you.

11          THE COURT: That was my word. That was my  
12 word. I'm sorry.

13          Q. All right. So let's pose some hypotheticals  
14 that might -- you know, and see how these affect the  
15 factual basis.

16                So is it your opinion that an RFP process is  
17 legitimate or helpful if one of the bidders, one of the  
18 three responding bids, edits and submits its response  
19 after reviewing the other bids?

20          A. I'm sorry. Could you repeat that?

21          Q. So if there are three or four bidders to an  
22 RFP --

23          A. Yes.

24          Q. -- is the RFP process fair if one of those  
25 bidders reviews the bids -- other bids before submitting

1 their response and edits their response?

2 A. No. I mean, obviously the RFP that's provided  
3 should presumably remain unchanged.

4 Q. Okay. And is it your opinion that the RFP  
5 process is legitimate if one of the bidders is also the  
6 only person scoring those RFP responses?

7 A. It's -- it's certainly potentially  
8 problematic.

9 Q. Potentially problematic?

10 A. Yes.

11 Q. So it's not always problematic to have one of  
12 the bidders of an RFP -- one of the people that  
13 submitted a bid in an RFP to also be the only person  
14 scoring the responses?

15 A. It's problematic.

16 Q. Okay. What about if one of the bidders  
17 reviews the other bids and edits its response before  
18 submitting its response and then that bidder who edited  
19 his own response then grades the responses? Is that  
20 still a legitimate RFP process?

21 A. Again, no, it's problematic.

22 Q. Okay. And what if the RFP were for something  
23 technical, like IT services, and the person grading the  
24 RFP responses is -- not only is he one of the bidders,  
25 one of the people that submitted a bid, but he's also

1 the only person involved in the process with the  
2 technical expertise required to evaluate the responses  
3 and the values of them. Is that a legitimate RFP  
4 process?

5 A. It's also problematic.

6 Q. Why is it problematic?

7 A. Well, because obviously you have an individual  
8 involved in the procurement process who is not  
9 necessarily independent on your hypothetical and who is  
10 apparently the only person involved in the -- as you  
11 indicated, has the only IT experience with it.

12 I, of course, would add that that being the  
13 case, these individuals at the United Way who were at  
14 management positions, it's unclear maybe why wouldn't  
15 they ask more questions or ask specifically for a  
16 repository of the RFPs.

17 Q. And you -- and, again, you said you weren't  
18 here for the testimony of those witnesses?

19 A. That's right.

20 Q. And you didn't hear their responses to  
21 questions --

22 A. Of course.

23 Q. -- regarding those issues --

24 A. Right.

25 Q. -- right?



1           Let's talk about budgeting, again, the  
2     legitimacy of the budgeting process. If you're  
3     saying -- you know, you've testified Mr. Alrai generally  
4     came within budget or within the parameters of the  
5     budget.

6           A.     Yeah, based on the slides prepared by  
7     Mr. Naviloff.

8           Q.     Right. Yeah. And would your opinion change  
9     about the weight to give that if Mr. Alrai were the one  
10    preparing the budget and he prepared it in a way that  
11    was very vague and actually got a lot of pushback from  
12    accounting and was constantly trying to circumvent the  
13    budgeting procedures in process?

14          A.     I'm sorry. Could you repeat the question?

15          Q.     Sure.

16          A.     I'm not sure I'm clear on it.

17          Q.     If Mr. Alrai is drafting a budget --

18          A.     Yeah.

19          Q.     -- and providing the minimal level of detail  
20    to get it through the required oversight --

21          A.     Uh-huh.

22          Q.     -- consistently year after year, would that  
23    change your view at all about the weight you give the  
24    fact that he comes within budget?

25          A.     Well, it would certainly make me wonder in

1 terms of the people who finally approved it, why did  
2 they finally approve the budget. Presumably they  
3 received what information they felt was needed in order  
4 to approve it.

5 Q. And, again, you weren't here for the testimony  
6 from those individuals?

7 A. Right.

8 Q. And, again, would it change -- would it  
9 change your view -- actually, just posing another  
10 hypothetical -- if part of the reason these budgets are  
11 approved and contracts are entered into is because  
12 they're relying on the IT expertise of their guy, the  
13 person they hired to be in their corner for these  
14 issues, Mr. Imran Alrai?

15 A. Well, certainly I would expect them to rely on  
16 Mr. Alrai for the technical side of things. Again, I  
17 wasn't here for their testimony --

18 Q. Right.

19 A. -- but I would like to think that they were  
20 intelligent people who had history of IT budgets prior  
21 to Mr. Alrai being there and had some sense of what the  
22 cost was going to be.

23 Q. And that goes to the prior IT environment  
24 issue that you touched on, Mr. Kennedy.

25 Again, just looking at the factual basis of

1 your opinion, would it change in any way if part -- if  
2 you understood that part of the reason why Mr. Alrai was  
3 hired was because there was actually concern about the  
4 cost of IT and concern that there -- the person who was  
5 overseeing their major outside vendors might have too  
6 close a relationship with those vendors?

7 A. Would it change my opinion relative to the  
8 budget numbers? I'm not sure that it would necessarily.  
9 So there was concern apparently, as you've indicated  
10 before, but I'm not sure concern necessarily means that  
11 there was a problem and I'm not aware that there was a  
12 problem. If there was, I'm not aware of it.

13 Q. We'll talk about loss in a minute here, but  
14 Mr. Kennedy, what is your opinion about the amount of  
15 loss suffered by United Way? What's -- what's the  
16 number?

17 A. I didn't come up with an opinion. I wasn't  
18 engaged to do a loss calculation.

19 Q. Okay. So you have no opinion about the loss  
20 United Way suffered?

21 A. No.

22 Q. Did you do an analysis or review of the  
23 DigitalNet invoices to United Way and the -- and their  
24 contracts in conducting any of your analysis?

25 A. I did some level of review, although to

1 Mr. Naviloff's credit, he seemed to have been very  
2 thorough relative to his review of the invoices and the  
3 disbursements. And after some rather cursory review, I  
4 determined that there really wasn't a need to replicate  
5 that information and I relied on the amounts actually  
6 paid.

7 Q. Okay. So one thing you noted in your report,  
8 you know, regarding DigitalNet invoices -- I think this  
9 is regarding the services billed by Insight on the  
10 double billing --

11 A. Yes.

12 Q. -- issue. I think you said something like it  
13 may be that DigitalNet provided services that occurred  
14 at the implementation of the Insight services -- and  
15 from trial testimony, this would be sometime in the  
16 2016, 2015 -- late 2015 --

17 A. Uh-huh.

18 Q. -- time period, which were no longer  
19 recurring, but were built into the recurring cost,  
20 right? So there may be a recurring cost that includes  
21 implementation costs.

22 A. Yes, and that really just speaks to my being  
23 unfamiliar with the systems and IT environment.

24 Q. Okay. You said you did a cursory review. Are  
25 you aware that DigitalNet billed over \$300,000 to United

1 Way to set up servers and virtual desktops and that sort  
2 of thing when they switched from OVH to Insight?

3 A. Yes. But because of -- again, because of my  
4 technical inexperience with these things, I don't know  
5 to what extent the 300,000 represents all of the setup  
6 or if that incorporates some level of setup for which  
7 additional setup was included in the ongoing fee.

8 Q. Okay. So we talked a -- you talked a little  
9 bit about wires to Pakistan and whether those were  
10 business or personal expenses and that sort of thing.

11 A. Well, what I indicated was on the personal  
12 enrichment piece, Mr. Naviloff included the entire  
13 \$1.2 million --

14 Q. Right.

15 A. -- as personal enrichment. There seemed to be  
16 some indication that there was payroll out there, he had  
17 a schedule indicating, you know, 17 to 23 people at  
18 various points, and he included the entire 1.2 under his  
19 personal enrichment analysis.

20 I don't believe he then subsequently deducted  
21 his calculation relative to the payroll, though there  
22 may have been reasons why he didn't do it.

23 Q. Right. It was based on a review of documents  
24 received and relied on -- it was reciprocal and expert  
25 discovery, so relied on either by you or Mr. Sgro about

1 where the money was going in Pakistan?

2 A. That's right.

3 Q. And are you aware that there's been  
4 testimony -- and are -- would your opinion change at all  
5 in any way if there was evidence that Mr. Alrai spent  
6 about \$400,000 on real estate in Pakistan?

7 Or put in other ways, money coming from United  
8 Way to purchase real estate --

9 A. Uh-huh.

10 Q. -- is that a -- is that classified as an  
11 expense for services for United Way?

12 A. Presumably not. If it -- unless for some  
13 reason it had some sort of relationship to the business,  
14 but -- I'm sorry, relationship to the United Way  
15 activity.

16 Q. To United Way?

17 A. But I don't know what that would be.

18 Q. And so if it weren't related -- so on that  
19 point, I think you saw that the payroll activity  
20 continued after DigitalNet ended its contract with  
21 United Way.

22 A. Yes.

23 Q. Why wouldn't payment to run a separate  
24 business be a personal expense? So if the -- if there  
25 are people in Pakistan working on other businesses,

1 would that be a personal expense rather than a United  
2 Way related --

3 A. Well, you just said it was a business, so it  
4 would be a business expense.

5 Q. Well, a business expense, but not related to  
6 work being done for United Way.

7 A. Yes. So if what you're saying is there's  
8 another business which has nothing to do with United Way  
9 and the payroll that's being paid is for this other  
10 entity, then obviously it doesn't relate to United Way.

11 Q. Right. And all of that payroll is being  
12 funded by wire transfers that can be traced back to  
13 funds obtained by United Way, from United Way?

14 A. If you say so.

15 Q. I'm -- in this hypothetical.

16 A. Sure.

17 Q. So if there were evidence, for example, that  
18 the defendant had another company that was making apps  
19 and games, UltPult, and their activity is continuing  
20 through the period of payroll records, that's not an  
21 expense for services provided at United Way?

22 A. Well, certainly, presumably after the --  
23 Mr. Alrai was terminated, certainly anything after that  
24 point. But as I understand from Mr. -- you know, from  
25 the documentation that was provided by Mr. Naviloff, you

1 know, there weren't time sheets or anything, so --

2 Q. Right.

3 A. -- I don't know what those people were working  
4 on during Mr. Alrai's employment.

5 Q. Right. And in speaking to that lack of time  
6 sheets and other things, like the time sheets to figure  
7 out how much DigitalNet Pakistan employees are spending  
8 on United Way versus any of Mr. Alrai's other business  
9 ventures, those would be DigitalNet business records,  
10 right?

11 A. I am not sure.

12 Q. If DigitalNet's paying them to do work --

13 A. Yeah.

14 Q. -- and they're billing by the hour, presumably  
15 DigitalNet would keep track of the work they're doing  
16 and --

17 A. Well, if they're -- if they're DigitalNet  
18 employees, then ideally there'd be some kind of payroll  
19 records on them, yes.

20 Q. And the payroll records for DigitalNet  
21 Pakistan are DigitalNet records?

22 A. Well, you've referred to it as UltPult --  
23 UltPult, UltPult? Whatever that other company is.

24 Q. Right.

25 A. So if they're UltPult employees, perhaps the



1 DigitalNet company is providing loans or funding to help  
2 this other company. So the payroll records may be  
3 UltPult.

4 Q. Okay. Let's talk about the payroll records  
5 for DigitalNet in Pakistan.

6 Again, the records about what those employees  
7 are doing, the hours they're spending on United Way  
8 projects, the value they're providing to United Way,  
9 right, those would be DigitalNet business records --

10 A. Presumably.

11 Q. -- right? So if we wanted to know what work  
12 they were doing and how much, those would be records in  
13 DigitalNet's possession and control; isn't that right?

14 A. Yeah, although the actual company was AISA or  
15 ASIA --

16 Q. AISA, A-I-S-A?

17 A. Yeah.

18 Q. What do you mean when you say the actual  
19 company was AISA?

20 A. Wasn't the company name that -- the tax return  
21 was not labeled DigitalNet; it was that company, I  
22 believe, AISA Consulting.

23 And so in terms of the -- the payroll for  
24 DigitalNet, I'm referring -- I presume you're referring  
25 to that entity on the Schedule C.

1           Q.     And is it your understanding, Mr. Kennedy, if  
2     you've reviewed the documents, that the money funding  
3     the AISA bank accounts are -- is money coming from  
4     DigitalNet?

5           A.     That's my understanding.

6           Q.     And that money coming from DigitalNet is all  
7     money coming from United Way and Robert Allen Group?

8           A.     Again, that's my understanding.

9           Q.     Okay. And that for tax purposes, AISA was  
10    treated as DigitalNet; AISA is essentially a --

11          A.     Yeah, Mr. Naviloff -- I didn't do any  
12    particular -- my own research on it. Mr. Naviloff  
13    indicated that DigitalNet and AISA were basically  
14    consolidated on the Schedule C of Mr. Naviloff.

15          Q.     All right. Now, let's talk about, I guess,  
16    business expenses on the credit card. You haven't done  
17    a separate analysis, certainly not one that I've seen,  
18    analyzing the expenses charged on the DigitalNet credit  
19    card --

20          A.     That's correct.

21          Q.     -- is that right?

22                 And if Mr. Alrai claimed all of the credit  
23    card expenses as a deduction on his taxes, presumably he  
24    would be saying that was all business related; is that  
25    right?

1 A. Yes.

2 Q. Okay. So would you say that buying granite  
3 countertops is a legitimate business account for an IT  
4 services company operating out of a home office?

5 A. I don't know the answer to that.  
6 Presumably -- unless they needed counters at the office  
7 they were using.

8 Q. But for purposes of this, let's assume a home  
9 office.

10 A. For the home office, not completely  
11 deductible, no.

12 Q. Would plastic surgery be a legitimate business  
13 expense for an IT services company?

14 A. Unlikely.

15 Q. What about jewelry?

16 A. Again, unlikely.

17 Q. What about a trip to Niagara Falls with your  
18 wife? Is that a legitimate business expense for an IT  
19 services company?

20 A. Well, depends. If there was a seminar going  
21 on in Buffalo or something and you took your wife, then  
22 you know, there may be some legitimacy to it, but ...

23 MR. HUNTER: Can we go to page 568 of  
24 Exhibit 207. And that's Bates 48, I --

25 MS. SHEFF: Are you sure that's right? Oops,

1 here we go.

2 Q. Okay. These are the 2016 expenses for  
3 DigitalNet?

4 A. Uh-huh.

5 Q. And did you review this?

6 A. I saw it, yes.

7 Q. Okay. You saw it. And, again, you said you  
8 didn't do an audit of the bank statements?

9 A. No, I really didn't do any -- any analysis of  
10 the work papers supporting the tax returns.

11 Q. Okay. So do you think 59 grand for travel is  
12 deducted for a business expense?

13 A. If that was used on the Schedule C, yes.

14 Q. Okay. Let's look at IT support, the cost of  
15 services, one -- okay.

16 I see a total of 1.8 million in expenses.

17 A. Uh-huh.

18 Q. So that's about \$300,000 more than the income  
19 of the company. Do you see that?

20 A. Yes. And I don't have the Schedule C, but I  
21 don't recall a year in which he reported a loss, so I  
22 don't know how these numbers tie to the --

23 Q. Right.

24 A. -- items that were actually reported on the  
25 tax return.

1 MR. HUNTER: Nothing further at this time.

2 THE COURT: Thank you.

3 Redirect.

4 REDIRECT EXAMINATION

5 BY MR. HARRINGTON:

6 Q. Mr. Kennedy, I just have one topic I want to  
7 cover with you. It may take a series of questions to  
8 get there.

9 But you were asked on cross-examination about  
10 if an appropriate expenditure would be considered a  
11 business expense, I think was how it was put,  
12 particularly whether DigitalNet used money to buy a  
13 building in Pakistan or land in Pakistan. Do you recall  
14 that question?

15 A. Yes.

16 Q. And you were asked about whether that would be  
17 like an appropriate business expense as it related to a  
18 service being provided to the United Way, correct?

19 A. Correct.

20 Q. Let me ask you the same scenario, but once  
21 DigitalNet earns money or is paid money --

22 A. Uh-huh.

23 Q. -- for example, by United Way, would it be  
24 fair to say that they could use that money in any way  
25 they deemed appropriate for a business expense that

1 might include buying land or a building?

2 A. Of course.

3 MR. HARRINGTON: Okay. I have no other  
4 questions, Judge.

5 MR. HUNTER: Just quickly.

6 RECROSS-EXAMINATION

7 BY MR. HUNTER:

8 Q. Would it change your opinion at all if the  
9 business didn't own the land, but the defendant owned it  
10 personally?

11 A. Well, again, it would depend. If the -- as I  
12 mentioned before, it's a sole proprietorship, so the  
13 profits generated by the sole proprietor really can be  
14 used however they deem appropriate. It can be used as a  
15 draw. It could be potentially a -- technically, it  
16 could be a draw to the owner purchase personally, but  
17 still be used for business.

18 And so I -- often we recommend to people that  
19 real estate purchases are done separate from the entity  
20 in order to limit liability.

21 MR. HUNTER: Okay. And these -- these --  
22 nothing further.

23 THE COURT: All right. You're excused, sir.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you.

1 (Witness excused.)

2 MR. HARRINGTON: Your Honor, the defense calls  
3 to the stand Jason Sgro.

4 THE COURT: Thank you.

5 THE CLERK: Good afternoon, sir.

6 THE WITNESS: Good afternoon.

7 THE CLERK: If you'd like to step this way,  
8 please.

9 If you could step into the witness box and  
10 remain standing.

11 Please raise your right hand.

12 **JASON SGRO**, having been first duly sworn,  
13 testified as follows:

14 THE CLERK: For the record, please state your  
15 full name and spell your last name.

16 THE WITNESS: Jason Joseph Sgro, S-g-r-o.

17 THE CLERK: Thank you. Please be seated.

18 DIRECT EXAMINATION

19 BY MR. HARRINGTON:

20 Q. Good afternoon, Mr. Sgro. How are you today?

21 A. Good afternoon. I am well.

22 Q. So I want to first ask you some questions  
23 about your education --

24 A. Sure.

25 Q. -- background.

1           If you could, for the judge, explain what your  
2     educational background is, please.

3           A.     Sure. I have a bachelor of arts from  
4     Northeastern University. I am a certified ITIL expert,  
5     and that's information technology infrastructure  
6     library, which is the de facto international  
7     certification for professionals delivering IT services.

8           I am a certified project management  
9     professional for IT service delivery from the Project  
10    Management Institute, which is also a globally  
11    recognized body.

12          Q.     And let me ask you, in regard to your  
13    experience in the IT, could you detail for the judge  
14    your work history relative to the areas that you've just  
15    talked about?

16          A.     Sure. Right now I'm a senior partner at the  
17    Adam Group, which is an IT services and security  
18    software company. I've been doing that for about four  
19    years, where I am an equity partner and owner.

20          Before that, I was the chief information  
21    security officer and head of corporate IT for a company  
22    by the name of Agamatrix, which is a medical device  
23    company, wherein I ran software development and IT  
24    services in four countries -- the United States, Korea,  
25    China, and Vietnam -- and performed IT services for



1 700 -- about 700 employees.

2 Before that, I've had about 20 years or  
3 20 totalish years of IT experience both in global  
4 outsourcing as well as building up IT operations and  
5 supporting IT and software development.

6 Q. And let me ask you, do you act as a consultant  
7 to any organizations relative to IT and bring your  
8 expertise to them in that area?

9 A. Yes, many. I am currently, I believe, the  
10 only senior advisor to the State of New Hampshire  
11 legislative branch, the president of the Senate, the  
12 speaker of the house, as well as liaising on IT service  
13 delivery and cybersecurity matters throughout the  
14 legislative branch.

15 I'm also the advisor for security and privacy  
16 for the Validation Institute, which is a national  
17 company that accredits medical device claims and medical  
18 claims, where I advise them and the remainder of the  
19 board there on matters of security, privacy, IT  
20 operations, and outsourcing.

21 MR. HARRINGTON: Okay. Judge, I would tender  
22 this witness as an expert in the area of information  
23 technology.

24 MR. HUNTER: No objection.

25 THE COURT: He may testify and form an

1 opinion.

2 MR. HARRINGTON: Thank you, Judge.

3 Q. Mr. Sgro, did you have an occasion to be  
4 involved in a review of the case of United States vs.  
5 Imran Alrai?

6 A. I did.

7 Q. Okay. And did you also have the opportunity  
8 to sit in and listen to the testimony of Mr. Meyer?

9 A. I did.

10 Q. As well as Mr. Naviloff?

11 A. Yes, that's correct.

12 Q. Okay. In that regard, are there some areas  
13 that you would flag for the judge as areas that you  
14 would talk to to provide further information relative to  
15 the IT process as well as the testimony of Mr. Meyer and  
16 Mr. Naviloff?

17 A. Yes, there are a couple, and I would start  
18 with a fundamental understanding of the IT service  
19 delivery.

20 There's -- there's many instances in both  
21 the testimony that I heard as well as the documents I  
22 reviewed where -- the RSM report from Mr. Naviloff --  
23 where these services are being --

24 Q. I just want to stop you briefly.

25 A. Sorry.

1 Q. If you can talk just a little bit --

2 A. Oh, sure.

3 Q. -- more slowly --

4 A. Sorry.

5 Q. -- because the stenographer is taking all of  
6 this down.

7 A. My apologies.

8 As well as the RSM report produced by  
9 Mr. Naviloff.

10 These IT services are part of a conjoined  
11 system. They are not disparate things. So when we talk  
12 about servers and cloud, when we talk about telephony  
13 services and security and applications, these are part  
14 of a living system. There's a system by which the  
15 United Way does business every day and those systems are  
16 ever-changing.

17 And so -- I can give you a quick example of  
18 that.

19 When we talk about the telephony services,  
20 over the course of the discussion that I have heard and  
21 what I have read and I reviewed, there's actually three  
22 sets of telephony services.

23 So there was the Legacy telephone system that  
24 preexisted Mr. Alrai. There's the SIP.US system, which  
25 was implemented by him during his time, and then there's

1 the 8x8 system that was implemented by Mr. Meyer.

2 And so you can see that these services are  
3 evolving and living constantly. And I want -- when we  
4 go through some of the issues that I've -- that I would  
5 like to bring up, I think it's important to keep in mind  
6 that these services are changing and the services that  
7 surround them are changing.

8 What I would mean to say by that is if you  
9 take information security, right, if you look at  
10 Mr. Naviloff's report, he'll say that information  
11 security or security in general is a line item that  
12 equates to \$3,500 a month in cost to United Way.

13 Well, the information security for telephony  
14 and the information security for something like VDI,  
15 the virtual desktop environment, they -- they are  
16 intertwined, right? If one system is insecure, it could  
17 impact the other systems.

18 And so it is very difficult to line up the --  
19 which services are going to -- which subservices are  
20 going to which main services the way Mr. Naviloff's laid  
21 it out.

22 Q. And is that -- and is that due to the  
23 different skills that would need to be brought to bear  
24 to manage those systems?

25 A. It -- it's really due to two things. The

1 first is in order to understand -- accurately understand  
2 what happened in an IT environment, you need to be able  
3 to see that environment. Right? And I have not been  
4 able to analyze any servers or any cloud environments in  
5 that environment because I was told that they were  
6 either not preserved or too burdensome in order for us  
7 to -- or not possessed or too burdensome in order to  
8 allow us to analyze those.

9 In lieu of --

10 Q. And in -- just stop you on that briefly.

11 A. Yeah.

12 Q. In that regard, how does that impact your  
13 ability as an expert in this area to testify about what  
14 those systems were that were in place?

15 A. It makes it very difficult, right, because in  
16 order to accurately describe something and analyze  
17 something, you need to be able to see something. In  
18 lieu of seeing something, what you can do,  
19 alternatively, is look at -- do a forensic analysis of  
20 email communications or help desk communications.

21 And why those are important is none of these  
22 services are simple. They all require a decent amount  
23 of engineering activity. When there are issues with  
24 them, those issues were raised -- would be raised, you  
25 know, hypothetically, to a help desk and the help desk

1 would ticket them and use that as a -- and almost a  
2 management tool in order to deploy IT services within  
3 the environment.

4 And so, normally, if there was no environment  
5 to look at, we would look at forensic copies or  
6 complete, comprehensive copies of email accounts and  
7 help desk records. And we were unable to do that as  
8 well because those were either not preserved or too  
9 burdensome to be made available.

10 Q. Okay. So let's circle back now relative to a  
11 couple of different topics.

12 For example, did you have occasion to look  
13 into the issue of what they would refer to as duplicate  
14 of billing? You've heard some testimony about that.

15 A. I did.

16 Q. And you heard that that revolved around  
17 Insight versus DTS and CloudConnect, correct?

18 A. Yes. And this is what I'm talking about when  
19 I state that the services, without being able to see  
20 them, it's very difficult to understand exactly what's  
21 happening.

22 And I appreciate the analysis that  
23 Mr. Naviloff did. However, I believe there's an error.

24 Q. And what is that error?

25 A. The Insight bill and the DTS invoice for the

1 CloudConnect services are actually not duplicate bills.  
2 Those are not for the same thing.

3 And what I mean by that is one is for a VDI,  
4 which is a virtual desktop environment; that's how  
5 employees use their computers. It appeared in my  
6 analysis that potentially there was a migration, that  
7 they were moving services from DTS CloudConnect to  
8 Insight.

9 Q. And when you say they, what do you mean by  
10 that?

11 A. This would have been the -- the DTS  
12 organization was moving those services.

13 And so when you analyze those services at the  
14 invoice level, the details are really important, right,  
15 because we don't have an environment to look at. So we  
16 have to really look at these details.

17 And what you will see in the DTS cloud  
18 agreement -- invoice is that these are for  
19 infrastructure as a service and hosting in the  
20 CloudConnect environment, which is a specific software  
21 environment.

22 In the Insight environment, this is a VMware  
23 and IBM-based environment. These are fundamentally  
24 different softwares. And they provide a similar  
25 service, but in a much different way.

1           And so there's a bunch of different ways you  
2     can analyze this and one of them is certainly that,  
3     okay, they're the same, but I think the invoices show  
4     clearly that they are not the same.

5           When you are transitioning from one service to  
6     another, you don't take the things all out of one  
7     bucket, throw them in the air, and quickly try to build  
8     the other bucket. You bring them both up in parallel.  
9     At that time you pay for two services that are maybe  
10    similar, but are fundamentally different and you migrate  
11    over to them or it's very typical in many cases where  
12    those two environments have pros and cons, maybe one  
13    environment performs faster than the other environment,  
14    so certain users in your infrastructure are migrated to  
15    the new environment, in which case it is -- it is  
16    plausible that both environments are intended to be  
17    there in perpetuity.

18          Q.     Okay. Now, one of the other things that you  
19    looked at was the issue of geographic diversity.

20          A.     Yes.

21          Q.     That's been a topic that's been discussed a  
22    few times as a service that was contracted for --

23          A.     Correct.

24          Q.     -- but not provided.

25                 Could you speak to the judge a little bit



1 about your review of that issue?

2 A. Yes. So geographic diversity was actually  
3 discussed during the testimony of Mr. Meyer, wherein he  
4 used two cups to show the two data centers that would be  
5 in geographically diverse locations, wherein data could  
6 pass between them and potentially mitigate a service  
7 interruption. That is one version of regional  
8 diversity.

9 There's also another version of regional  
10 diversity where one data center is used and the business  
11 is used as the other region. So, for instance, a data  
12 center in Virginia would be regionally diverse from a  
13 business in Massachusetts. Those are regionally  
14 diverse.

15 But, again, because we don't have engineering  
16 communication or the environment to analyze, we can't  
17 see if there was data flow or systems present in both of  
18 those places to satisfy the regional diversity.

19 With regard to the promise of regional  
20 diversity from DTS, it is in the 2013 version of the IT  
21 managed services contract, says there'll be regional  
22 diversity at which time CloudConnect was built. And  
23 during the testimony where we saw the two -- the reuse  
24 of the CloudConnect verbiage as -- what do you call it,  
25 DigitalNet contract, right, where they're passing those

1 services, CloudConnect did show in their service  
2 agreement that there was regional diversity and  
3 redundancy.

4 I think in the case where an outage occurred,  
5 there was -- this was in the OVH data center in  
6 Virginia. And two assumptions are made in that  
7 testimony that I think are not fair. The first is that  
8 the -- the contract that was signed in 2013 that  
9 promised the delivery of those services was never  
10 updated to reflect the installation of an OVH service,  
11 right? This was --

12 Q. So just to be clear, when you're talking about  
13 the change from CloudConnect --

14 A. Right.

15 Q. -- to OVH --

16 A. Correct.

17 Q. -- there wasn't an amendment to the contract  
18 to reflect the difference between CloudConnect and OVH?

19 A. Correct. This is five years now or four years  
20 in the future. And so that's -- that's one point.

21 The other point is that that environment was  
22 not available for analysis. And so while I think it's  
23 reasonable to assume that perhaps OVH does not have a  
24 regionally diverse data center, that doesn't mean that  
25 there was no regional diversity. And what I mean by

1 that is the presence of an outage does not mean that  
2 redundancy or regional diversity wasn't in play.

3 I'll give you a hypothetical. Facebook has  
4 dozens -- literally dozens of data centers across the  
5 globe to achieve regional diversity. They certainly  
6 have a high availability fault tolerant environment for  
7 their infrastructure and they have outages, right?  
8 These are ultimately computer systems and despite our  
9 best efforts as technologists, they will go down. So it  
10 does not follow that because there is  
11 an outage, therefore, it was not regional diversity.

12 So that is a case where I would rely on either  
13 the communications, which we were not able to analyze,  
14 or a review of the environment, which also we weren't  
15 able to analyze.

16 Q. And let me ask this question, because I want  
17 to clarify.

18 A. Uh-huh.

19 Q. We've heard the term high availability backup  
20 and we've heard the term regional diversity.

21 A. Correct.

22 Q. Are those two connected to each other or are  
23 they distinct?

24 A. No, they're -- those are distinct in that the  
25 high availability -- they're really three things.

1           High availability is the availability of a  
2   system to withstand a component failure within that  
3   system. Right?

4           So, for instance, it could be two hard drives  
5   in storage so that one hard drive fails and the other  
6   hard drive is okay; there could be two servers or three,  
7   you know, as an example. There's plenty of examples  
8   there.

9           Backup is your ability to recover from a  
10   systemwide failure. So if both of those two hard drives  
11   were to fail, you would then restore them from a backup.

12           Regional diversity mitigates maybe a whole  
13   building being down or maybe a region having a hurricane  
14   where power was lost for an extended period of time.  
15   But those are really three distinct things.

16           Q. And in your review of this case and your  
17   listening to the testimony, are you aware of whether  
18   there was high availability backup made available?

19           A. I'm not aware. We were not able to analyze  
20   that.

21           Q. And this again goes to the area where you  
22   weren't able to analyze the environment nor were you  
23   able to review emails that might discuss the issue; is  
24   that right?

25           A. Yeah, that's correct. So we weren't able to

1 view any forensic copies or comprehensive copies of  
2 email communication, the help desk, or any of the IT  
3 environments.

4 Q. Okay. Let me ask, were you also able to  
5 review and listen to testimony regarding SIP, S-I-P.US?

6 A. That's correct. Yes, that's correct.

7 Q. Can you tell the judge a little bit about your  
8 analysis of that area?

9 A. So SIP is a place where, while I can  
10 appreciate the thoroughness of Mr. Naviloff's RSM  
11 report, things need to be placed accurately in time.

12 And what I mean by that is, first, SIP is part  
13 of a telephony system. Right? They provide a service  
14 that combined with networking and security and phone  
15 systems and wiring and all of that, and bandwidth, would  
16 comprehensively create a phone system.

17 Q. And let me ask you, when we talk about SIP --  
18 and you talked about that it's part of --

19 A. Yes.

20 Q. -- a telephony system, all of those things  
21 that you just described --

22 A. Yeah.

23 Q. -- is that what SIP is providing?

24 A. No, that's not what SIP is providing. SIP is  
25 only providing the protocol by which these phones work.

1 So basically the ability for the number to leave the  
2 building and call somebody else.

3 Q. All right. So all the other stuff that's  
4 attached to the -- the telephony system --

5 A. Yeah.

6 Q. -- SIP is providing the line in and out?

7 A. Essentially -- not the physical line, but the  
8 capability for --

9 Q. The capability --

10 A. -- for the line, yes, correct.

11 Q. -- to go in and out.

12 And all the other services that you're talking  
13 about -- and, again, if you'd recap them -- this is in  
14 addition to or separate from what SIP is doing?

15 A. Yes. These are in addition, correct.

16 Q. And what are those again?

17 THE COURT: Can I interrupt?

18 MR. HARRINGTON: Yeah.

19 THE COURT: Can you estimate how much for  
20 direct you have?

21 MR. HARRINGTON: I would say maybe another 15,  
22 20 minutes, Judge.

23 THE COURT: We'll take a lunch break then.

24 MR. HARRINGTON: Okay.

25 THE COURT: We'll take a lunch break and

1 reconvene at 1:30.

2 (Lunch recess taken at 12:32 p.m.)

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## C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 4/10/2020

/s/ Liza W. Dubois  
LIZA W. DUBOIS, RMR, CRR